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1 WATERHOUSE - 10-19-21
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- 2 don't know because, again, I wasn't reviewing
- 3 them. I hadn't reviewed a close package for --
- 4 for a long time. But I believe the standard
- 5 practice that was still being carried out.
- Q. Did you ever have any discussions
- 7 with the debtor's independent board concerning
- 8 any promissory notes that were issued by any of
- 9 the affiliates or Mr. Dondero?
- 10 A. I can't -- I can't -- I can't recall
- 11 specifically.
- 12 Q. Did you speak with the independent
- 13 board from time to time?
- 14 A. Yes, from -- from -- from time to
- time I had discussions with the independent
- 16 board members, you know, either -- either, you
- 17 know, by themselves or wholly, you know, as --
- 18 as a -- as a combined work.
- 19 Q. Okay. Before we talk about
- 20 Mr. Seery, do you recall ever having a
- 21 conversation with Mr. Nelms or Mr. Dubel
- 22 concerning any promissory note that was
- 23 rendered by one of the affiliates or
- 24 Mr. Dondero to Highland?
- 25 A. I don't recall any conversations

Page 234 WATERHOUSE - 10-19-21 1 specifically. 2. Do you know if the topic was ever 3 discussed, even if you don't remember it 4 specifically? 5 MS. DANDENEAU: Objection to form. 6 7 Α. It -- it -- it may have. I don't know. I don't recall. 8 9 Do you recall ever discussing any Q. promissory note issued by any of the affiliates 10 or Mr. Dondero with James Seery? 11 Α. I don't -- I don't recall 12 13 specifically. 14 Q. Do you recall generally ever 15 discussing the topic of promissory notes issued by any of the affiliates or Mr. Dondero to 16 Highland with Mr. Seery? 17 Nothing -- nothing is really jumping 18 Α. 19 out at me. 20 Do you recall if you ever told Mr. Seery that any of the affiliates or 21 22 Mr. Dondero didn't have an obligation to pay all amounts due and owing under their notes? 23 24 Α. I don't recall having that conversation. 25

```
Page 235
                  WATERHOUSE - 10-19-21
 1
          Ο.
                Did you ever tell Mr. Seery that you
     had any reason to believe that the amounts
 3
     reflected in the notes issued by the affiliates
 4
 5
     and Mr. Dondero were invalid for any reason?
                I don't -- I don't recall.
 6
          Α.
                Did you tell Mr. Dondero -- did you
 7
          Ο.
     tell Mr. Seery that you thought the promissory
 8
     notes issued by the advisors and Mr. Dondero
 9
     that were outstanding as of the petition date
10
     were assets of the estate?
11
                I don't recall having a specific
12
          Α.
     conversation about those -- you know, those
13
14
     notes outstanding as -- as of the petition date
15
     being assets on the estate. I mean, we put
     together -- you know, they're in the books and
16
     records of the financial statements.
17
     recall having a specific conversation.
18
19
                Did you ever prepare any documents
          Ο.
20
     that were delivered to Mr. Seery that concerned
     the promissory notes issued by any of the
21
```

you mean did I just -- did I give Mr. Seery

TSG Reporting - Worldwide

MS. DANDENEAU: Objection to form.

Did I produce any that concerned --

877-702-9580

affiliates or Mr. Dondero?

Α.

22

23

24

25

```
Page 236
                  WATERHOUSE - 10-19-21
 1
     anything that -- that said I have concerns over
     these notes?
 3
                    Let me try again. Maybe it was
 4
          Ο.
                No.
 5
     my question.
 6
                Did you ever give Mr. Seery any
 7
     information concerning any of the notes that
     were issued by any of the affiliates or
 8
 9
     Mr. Dondero?
10
                MS. DANDENEAU: Objection to form.
                I don't recall if I did or not.
11
     don't -- I don't remember. I mean, you have my
12
13
     emails. You may have asked. Again, I don't --
     I don't know.
14
15
                MR. MORRIS: Can we put up the
16
          document that has been premarked as Exhibit
17
          39?
                MS. DANDENEAU: John, that is this
18
19
          document, isn't it?
20
                MR. MORRIS: Oh, yeah, it might be,
          as a matter of fact. Let's go to Number
21
22
          40.
                (Exhibit 40 marked.)
23
24
                During the bankruptcy,
          Ο.
     Mr. Waterhouse, did you prepare documents that
25
```

Page 237 WATERHOUSE - 10-19-21 1 were filed with the bankruptcy court?

- Α. I didn't -- I didn't prepare them 3
- personally. 4
- 5 Did people prepare them under your Ο.
- direction? 6
- 7 There were members of the team Α. Yes.
- that prepared them, and they worked in -- you 8
- 9 know, there were members of DSI that were
- involved in the process as well. 10
- To the best of your knowledge, did 11
- DSI rely on the employees of Highland for the 12
- 13 information that they used to prepare the
- 14 bankruptcy filings?
- 15 Α. Yes. The books and records were
- with the Highland personnel. 16
- Okay. And do you see on the screen 17 Ο.
- here, there is a document that we have marked 18
- 19 as Exhibit 40 that is -- that is titled Summary
- 20 of Assets and Liabilities?
- Uh-huh. 21 Α.
- Okay. And do you recall reviewing 22 Ο.
- any summary of assets and liabilities before it 23
- 24 was filed with the bankruptcy court?
- 25 Yes, I recall reviewing this at a Α.

Page 238 WATERHOUSE - 10-19-21 1 high level. 2. And did you believe that it was 3 Ο. accurate at the time it was filed? 4 I didn't have any other reason to 5 believe otherwise. 6 7 Okay. Do you see that the total value of all properties listed in Part 1 is 8 approximately \$410 million? 9 10 MS. DEITSCH-PEREZ: Objection to form. 11 Yes, it is in 1c. 12 Α. 13 Q. Yes. Yes, I see that. 14 Α. 15 Okay. If we go to the second page, Q. now I think I may just have excerpts here, just 16 so everybody is clear, but if we scroll down to 17 the second page, you will see that there is 18 19 a -- a little further. There you go. You will see there is a reference to Item 71, notes 20 receivable. 21 22 Do you see that? Α. T do. 23 And that was a reference to the 24 Ο. notes receivable from the affiliates and 25

Case 3:21-cv-00881-X Docum Exhibite A19 Plaiged 2888 (009)/4246 Page 7 of 192 Page ID 54729 Page 239 WATERHOUSE - 10-19-21 1 Mr. Dondero, among others; is that right? 2. MS. DANDENEAU: Objection to form. 3 Α. The affiliate notes and the 4 5 Dondero notes were in this amount, but they 6 weren't -- again, like you said, and among 7 others. Okay. We will look at the 8 Ο. specificity because I'm not playing gaming 9 here, but do you know if the \$150 million of 10 notes receivable was included within the 11 \$410 million of total value of the debtor's 12 13 assets? MS. DANDENEAU: Objection to form. 14 15 Α. I -- I -- I believe so. 16 Ο. Right. And so is it fair to say that as of the date this document was prepared, 17 the notes receivable were more than one-third 18 of the value of the debtor's assets? 19 20 MS. DEITSCH-PEREZ: Object to the form. 21 22 MS. DANDENEAU: Object to the form.

Again, if you are just taking the 23 Α.

24 math, 150 divided by whatever the \$400 million

number is above, then yes, you get there. 25

Page 240 WATERHOUSE - 10-19-21 1 Q. Okay. You know, but as of the time of this 3 Α. filing, that is what was put in this filing, 4 right, but, you know, I mean, numbers --5 6 numbers change, facts and circumstances change. 7 But as the CFO of Highland, the debtor in bankruptcy, did you believe that this 8 number accurately reflected the total amount 9 due under the notes receivable? 10 That is what we had in our books and 11 Α. records. 12 13 Ο. Okay. And did you believe as the 14 CFO that the books and records accurately 15 reported the then value of the debtor's assets? 16 MS. DANDENEAU: Objection to form. We didn't -- as part of this filing, 17 Α. there was no fair value measurement or 18 19 anything. These were just accounting entries 20 for the promissory notes. There is no analysis for impairment or fair market value adjustments 21 22 or anything of that nature. This is purely taking numbers and putting them in our form. 23 24 Did you do any impairment analysis Ο.

at any time while you were employed by

25

Page 241 WATERHOUSE - 10-19-21 1 Highland? 2. Α. Yes, we did do impairment analysis 3 4 on -- on assets. Okay. Did you ever do an impairment 5 Ο. 6 analysis on any of the promissory notes that were given to Highland by any of the affiliates 7 or Mr. Dondero? 8 9 Α. Not that I recall. Under what circumstances do you 10 Ο. prepare impairment analyses? 11 As -- as -- if you're preparing 12 Α. financials in accordance with GAAP, generally 13 14 accepted accounting principles, if you're 15 preparing full GAAP financials, you should be preparing -- you should be undergoing on a 16 periodic basis any fair market value 17 adjustments to assets. 18 As I was instructed at the time of 19 20 the petition date, we weren't producing GAAP financials. So this wasn't something I was 21 22 worried about nor concerned about. Okay. Were NexPoint and HCMFA and 23 Ο. 24 Highland's audited financial statements prepared in accordance with GAAP? 25

WATERHOUSE - 10-19-21

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- A. The audited financials -- yes,
- 3 audited financial statements are prepared in
- 4 accordance with GAAP.
- 5 Q. Do you recall whether any of
- 6 Highland or HCMFA or NexPoint ever made a fair
- 7 market value adjustment to any of the notes
- 8 issued by any of the affiliates or Mr. Dondero
- 9 to Highland?

1

- 10 A. I do not recall that happening, but
- 11 the -- it is because under -- under GAAP,
- 12 the -- the treatment of liabilities is
- 13 different than assets.
- Q. Okay. So then let's just focus on
- 15 Highland's audited financial statements.
- 16 The last audited financial
- 17 statements were for the period ending December
- 18 31st, 2018; correct?
- 19 A. That is my understanding.
- 20 Q. And you had -- you had an obligation
- 21 to disclose anything to PricewaterhouseCoopers
- 22 concerning any subsequent events between the
- end of 2018 and June 3rd, 2019; correct?
- MS. DANDENEAU: Objection to form.
- MS. DEITSCH-PEREZ: Form.

Page 243 WATERHOUSE - 10-19-21 1 Α. Correct. Okay. To the best of your 3 Ο. knowledge, as Highland's CFO, did Highland ever 4 make any fair market value adjustments to any 5 6 of the promissory notes that were carried on 7 its balance sheet and that were issued by any of the affiliates or Mr. Dondero? 8 9 I think I answered that question Α. I don't recall doing that for any of 10 the -- those -- those notes. So it would have 11 included the audit for the -- for the 2018 12 13 period. 14 Q. Okay. 15 MR. MORRIS: Can we go to the next 16 page. Do you see this is a note a list of 17 Ο. notes receivable? Do you see that? 18 19 Yes, I do. Α. 20 And do you see that this ties into Q. the page that we were just looking? 21 22 I'm sorry, can we go back to the Α. prior page? I mean, it was at 150,331,222. 23 Ιt 24 was on the prior page. Next page. Yes, it 25 agrees.

Page 244 WATERHOUSE - 10-19-21 1 Okay. So now let's look at that Q. schedule. So this was the face amount of all 3 of the promissory notes that Highland held at 4 the time this document was filed with the 5 6 bankruptcy court; right? 7 Α. Yes. There is a footnote there that says, 8 Ο. doubtful or uncollectible accounts are 9 evaluated at year-end. 10 Do you see that? 11 Α. I do. 12 13 Ο. Okay. And is it fair to say that as of the year-end 2018, the year before this, 14 15 that to the extent any of these notes were outstanding at that time, they weren't deemed 16 to be doubtful or uncollectible? 17 Yeah. For the 2018 audit, there 18 Α. weren't any -- there weren't any adjustments to 19 20 fair value. Okay. And during the bankruptcy, do 21 Ο. you recall that Highland subsequently reserved 22 for the Hunter Mountain Investment Trust note? 23 24 Α. Yes. Why did Highland -- were you 25 Q.

- 1 WATERHOUSE 10-19-21
- 2 involved in the decision to reserve the Hunter
- 3 Mountain Investment Trust note?
- 4 A. I was not.
- 5 Q. Do you know why Highland decided to
- 6 reserve for the Hunter Mountain Investment
- 7 Trust note?
- 8 A. I don't know yet decision was made.
- 9 I believe it was made by someone at DSI.
- 10 Q. Okay. I'm just asking if you know
- 11 why.
- 12 Did you ever ask anyone why they
- 13 reserved for that particular note?
- 14 A. I don't recall.
- 15 Q. Do you know whether the debtor
- 16 reserved for any other note on this list during
- 17 the bankruptcy?
- 18 A. Again, I don't recall. I wasn't
- 19 part of any process of -- again, like any fair
- 20 value adjustments or anything to that degree.
- 21 Like I said, a lot of that was done by DSI and
- 22 it was kind of out of our court.
- Q. Okay. Do you know if any note
- 24 receivable on this list was ever deemed by the
- 25 debtor to be doubtful or uncollectible?

- 1 WATERHOUSE 10-19-21
- 2 A. I don't -- I don't have a
- 3 recollection of every filing, so I don't know.
- 4 Q. Did you ever have a discussion with
- 5 anybody at any time about whether any of the
- 6 notes receivable on this list should be deemed
- 7 to be doubtful or uncollectible?
- 8 A. No. As I previously stated, we were
- 9 told we didn't have to keep GAAP financials.
- 10 We weren't having -- you know, there is no
- 11 underlying audits being performed, so I mean,
- 12 it wasn't something I worried about.
- MR. MORRIS: I move to strike.
- Q. Did you ever have a conversation
- 15 with anybody about any of the notes receivable
- and whether they should be deemed to be
- 17 doubtful or uncollectible? Did you have the
- 18 conversation, yes or no?
- MS. DANDENEAU: Objection to form.
- 20 A. I don't recall.
- Q. Do you recall ever telling anybody
- 22 that you believed any of the notes receivable
- 23 on this list should be doubtful -- should be
- 24 deemed to be doubtful or uncollectible?
- MS. DANDENEAU: Objection to form.

Case 3:21-cv-00881-X Docume Exhibit-A9 Falge 2960912446 Page 15 of 192 PageID 54737 Page 247 WATERHOUSE - 10-19-21 1 I don't recall. I mean, it may have Α. happened, you know, again, when we initially 3 getting DSI up to speed and going through 4 5 financials, it may have happened, but I don't recall specifically. 6 7 While you were the CFO of Highland during the time that the company was in 8 9 bankruptcy, did you have any reason to believe that any of the notes receivable on this list 10 other than Hunter Mountain Investment Trust 11 should have been characterized as doubtful or 12 13 uncollectible? 14 MS. DANDENEAU: Objection to form. 15 MS. DEITSCH-PEREZ: Form. 16 Α. I didn't know. I didn't form an Bankruptcy was new to me. 17 opinion. It still

- is new to me, even after going through this.
- 19 So I really didn't know what to expect nor
- 20 really -- you know, I didn't know.
- MR. MORRIS: I move to strike.
- Q. During the period of Highland's
- 23 bankruptcy when you were serving as CFO, did
- 24 you have any reason to believe any of the notes
- on this list were doubtful or uncollectible?

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                  WATERHOUSE - 10-19-21
 1
                MS. DEITSCH-PEREZ: This is like the
          fifth time you've asked it. Object to the
 3
          form.
 4
 5
                MR. MORRIS: I'm moving to strike,
 6
          if you haven't noticed, because he's not
 7
          answering the question.
                MS. DEITSCH-PEREZ: He was answering
 8
 9
          the question, you just didn't like it, like
10
          the answer.
                MR. MORRIS: Good Lord.
11
                Go ahead, Mr. Waterhouse.
12
          Q.
                Again, I don't -- we brought up a
13
          Α.
14
     myriad of issues at the start of the bankruptcy
15
            I don't recall if this was one of them,
16
     but, again, there are a lot of things we
     couldn't change. Even, you know, I was told
17
     status quo, blah, blah, right, there is a
18
19
     stay, you can't -- you know, I don't recall
20
     specifically, but that doesn't mean it didn't
21
     happen.
22
                MR. MORRIS: I move to strike.
                During the time that Highland was in
23
          Ο.
24
     bankruptcy and you served as CFO, did you have
     any reason to believe that any of the notes
25
```

Page 249 WATERHOUSE - 10-19-21 1 receivable on this list were doubtful or uncollectible? 3 MS. DEITSCH-PEREZ: Object to the 4 5 form. 6 Α. Potentially. 7 Did you ever tell anybody that? Ο. As I just stated like five times, 8 Α. yes, we -- at the beginning after filing and we 9 were getting DSI and others up to speed, you 10 know, we had a myriad of discussions of a lot 11 of things and this was likely one of them. 12 13 don't -- but I don't recall specifically we 14 talked --15 0. I don't want to know -- I don't want to know what was --16 MS. DEITSCH-PEREZ: Wait, wait. 17 Excuse me. Mr. Morris, you did not let him 18 finish his answer. 19 20 I spoke -- we had -- we were Α. 21 bringing Fred Karesa and Brad Sharp (phonetic) up to speed on all of these items, contracts, 22 and investments and going through -- we had 23 24 hours and hours and hours of discussion. 25 then not only do I have to repeat this not

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1 WATERHOUSE - 10-19-21
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- 2 once, twice, three, four times with -- you
- 3 know, I mean, we -- I don't -- I don't remember
- 4 the sum culmination of all these discussions.
- 5 They all kind of blend together.
- 6 MR. MORRIS: Okay. I move to strike
- 7 and I will try one more time.
- 8 Q. Did you ever tell anybody at DSI
- 9 that you believed any of the notes receivable
- 10 on this list were doubtful or uncollectible?
- MS. DANDENEAU: Object to form.
- 12 A. Potentially.
- Q. Potentially you told them or
- 14 potentially they were doubtful or
- 15 uncollectible?
- 16 A. Potentially I told them that we
- 17 needed to look at the value of these -- of
- 18 these assets.
- 19 Q. Okay. Did you -- okay. It is
- 20 potential that you told them and it is
- 21 potentially that you didn't; right?
- MS. DANDENEAU: Objection to form.
- 23 A. I've gone through that. I don't
- 24 recall specifically.
- 25 Q. So you should just -- I don't want

Page 251 1 WATERHOUSE - 10-19-21 to tell what you to do. Do you have --MS. DANDENEAU: Good. 3 0. Other than -- other than telling 4 5 them that they should look at the values, do 6 you have any recollection whatsoever of ever 7 having told anybody at DSI that any of the notes receivable on this page were doubtful or 8 9 uncollectible? 10 MS. DEITSCH-PEREZ: Object to the form. 11 MS. DANDENEAU: Objection. 12 13 Α. I recall having general discussions 14 about everything on our balance sheet which 15 would have included these -- these notes receivable. 16 17 Ο. Okay. I don't recall specifically where 18 Α. those discussions delved into. 19 20 Do you recall any discussion at all Ο. on the topic of whether any of these notes on 21 this list were doubtful or uncollectible? 22 23 MR. AIGEN: Mr. Morris, how on earth 24 is that question different from the 25 question that you just asked for the last

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Page 252
             WATERHOUSE - 10-19-21
 1
     five times? I mean, really I thought you
     were -- (overspeak.)
 3
           MR. MORRIS: Because he never
 4
 5
     answered it.
 6
           MS. DEITSCH-PEREZ: Are you
 7
     listening to him?
           MR. MORRIS: You know --
 8
 9
           MS. DEITSCH-PEREZ: He basically
     said that he had a conversation with DSI
10
     that went over all of this stuff and that
11
     conversation could have included the notes
12
13
     but he doesn't recall specifically.
14
           What more do you want him -- to ask
15
     of him?
           MR. MORRIS: I want him -- I would
16
     love him to say -- I would like him to
17
     testify to the truth, and that is he has no
18
     recollection.
19
20
           MS. DEITSCH-PEREZ: Well, the truth
     as you would like to see it, but -- but he
21
22
     is testifying truthfully. And I -- and, by
     the way, I move to strike that comment --
23
24
           MR. MORRIS:
                        Okay.
25
           MS. DEITSCH-PEREZ: -- because it
```

```
Page 253
                  WATERHOUSE - 10-19-21
 1
          suggests that he has not testified
          truthfully.
 3
                MR. MORRIS: I will ask my question
 4
 5
          again. And if at any time you want to
 6
          direct him not to answer, that is your
 7
          prerogative.
                Mr. Waterhouse, do you have any
 8
          Ο.
     recollection at all of ever telling anybody
 9
     from DSI that any of these notes were doubtful
10
     or uncollectible?
11
12
                MS. DANDENEAU: Object to form.
13
          Α.
                I don't remember specifically.
                Do you remember generally that
14
          Q.
15
     specific topic?
                We generally talked about assets,
16
          Α.
              If -- we had discussions of that and
17
     collectability in nature. I mean, of Highland,
18
     the funds, the CLOs, the entire complex. We
19
20
     had discussions like that, which is, you know,
     as you look at a billion dollar consolidated
21
     balance sheet.
22
23
                So I generally remember -- this is
24
     billions of dollars, including these assets --
     having discussions of this -- of this type.
25
```

Page 254 WATERHOUSE - 10-19-21 1 Ο. Do you believe that an affiliate loan on this list was doubtful or 3 uncollectible? Would you have told that to 4 5 DSI? 6 MS. DANDENEAU: Objection to form. 7 MS. DEITSCH-PEREZ: Object to form. If we had, like -- again, if we --8 Α. if -- if we weren't preparing financial 9 statements in accordance with GAAP, and -- you 10 know, if DSI at that point -- they were --11 12 again, I was new to bankruptcy. 13 The CRO is -- we are delegating 14 everything to the CRO. All the decisionmaking. 15 Remember -- remember when you and I went into 16 Delaware Court and we were saying DSI basically does everything, remember this, Mr. Morris? 17 You were my counsel at the time, and 18 19 basically we're running everything through DSI. 20 That was what this was like in the early part. Everything was communicated through 21 22 So DSI says this. DSI says that. is what we're doing, and we're pointing out 23 24 things to them. Now, they decide what direction this 25

```
Page 255
                   WATERHOUSE - 10-19-21
 1
 2.
     goes.
                Did you point out that any of
 3
          Ο.
     these --
 4
                 I don't recall specifically.
 5
          Α.
 6
          Ο.
                 Okay. At any time that you served
 7
     as Highland's CFO, did you ever point out to
     DSI that any of these loans were doubtful or
 8
     uncollectible?
 9
10
                 MS. DEITSCH-PEREZ: Object to the
          form.
11
                MS. DANDENEAU: Objection.
12
13
          Α.
                 If you're asking me if I had a
14
     conversation with DSI, if any of these loans
15
     were doubtful or uncollectible, I don't recall
     specifically.
16
                Do you recall that the debtor filed
17
     on the docket monthly operating reports?
18
19
          Α.
                 Yes.
20
                You prepared those personally,
          Q.
     didn't you?
21
22
                 MS. DEITSCH-PEREZ: Objection to
23
          form.
24
                 I didn't personally prepare them,
     the team did with DSI.
25
```

Page 256 WATERHOUSE - 10-19-21 1 Q. But you signed them; correct? My signature is on the MORs. 3 Α. And you signed them as the preparer 4 Ο. 5 of the document; correct? 6 Α. Yes, I did this pursuant to DSI's 7 instructions. Okay. You wouldn't have signed the 8 Ο. document if you didn't believe it to be 9 accurate; correct? 10 If I had reason to believe it 11 wasn't, presumably I wouldn't have signed it. 12 13 Ο. Okay. And do you have any reason to 14 believe right now that any monthly operating 15 report that has your signature on it was 16 inaccurate in any way? 17 MS. DEITSCH-PEREZ: Object to the 18 form. My understanding of the monthly 19 Α. 20 operating reports is we were filing them in accordance with the standards set by the Court. 21 22 It wasn't -- you know, again, I don't -- you know, it wasn't GAAP. It wasn't these other 23 24 standards, so I testified I didn't have experience in this. The CRO was running the 25

WATERHOUSE - 10-19-21

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- 2 show. I followed their advice.
- 3 Q. But you assured yourself that
- 4 everything in the report was accurate before
- 5 you signed them; correct?
- 6 MS. DANDENEAU: Objection to form.
- 7 A. I trusted the guidance from the CRO
- 8 and their team and their experience and their
- 9 quidance for doing this for many, many, many
- 10 years to -- to -- to categorize and put things
- in ways on the form.
- 12 You know, my team had -- had not
- 13 filled out these forms before and needed all of
- 14 this guidance. I'm not an expert in this. I
- 15 have oversight of it. I signed the form. DSI
- 16 told me to.

1

- 17 Q. And you and your team are the source
- 18 of the information that DSI used to create the
- 19 reports; correct?
- MS. DANDENEAU: Objection to form.
- 21 A. The books and records reside with
- 22 the -- with -- with the corporate accounting
- 23 team.
- Q. Okay. And the corporate accounting
- 25 team was the corporate accounting team that was

```
Page 258
 1
                   WATERHOUSE - 10-19-21
     under your direction; correct?
          Α.
                 Yes.
 3
          0.
                 So -- so your team was responsible
 4
     for maintaining Highland's books and records;
 5
 6
     correct?
 7
                 I'm sorry, my team was responsible?
          Α.
                 Correct.
 8
          Ο.
 9
                       They -- they -- they were
          Α.
                 Yes.
     the -- the -- the general ledger of Highland,
10
     that responsibility was with the corporate
11
     accounting team.
12
13
          Ο.
                 The corporate accounting group
     reported to you; correct?
14
15
          Α.
                 Yes.
16
                 MR. MORRIS: Can we put up 41,
          please.
17
                 (Exhibit 41 marked.)
18
19
                 All right. You will see that this
          Ο.
20
     is a report that is dated January 31st, 2020,
     but it is for the month ending December 2019.
21
22
                 Do you see that?
23
          Α.
                 I do.
24
                 And you signed this report in your
          Ο.
     capacity as the chief financial officer of
25
```

Page 259 WATERHOUSE - 10-19-21 1 Highland; correct? Α. Yes. 3 And you're the preparer -- you're 4 Ο. 5 identified as the preparer of the report; 6 correct? 7 Α. That is correct. Do you recall participating in the 8 Ο. preparation of monthly operating reports? 9 10 As I testified earlier, it was put Α. together, you know, with the team. The team 11 worked with DSI to put these monthly operating 12 13 reports together. We had no experience at this time of the monthly operating reports or things 14 15 of this nature. 16 MR. MORRIS: Can you turn to the next page, please. 17 Do you see a line item under assets 18 0. due from affiliates? 19 20 Α. Yes, I do. Okay. And to the best of your 21 Ο. 22 knowledge and understanding, as the person who is identified as the preparer of this report, 23 24 does that line item include the affiliate loans that we've been talking about? 25

- 1 WATERHOUSE 10-19-21
- A. Again, I would have to see, just
- 3 like we did with the financial statements of
- 4 Highland and NexPoint, I would have to see a
- 5 detailed build, but, you know, if you look at
- 6 the other line items, you know, the only other
- 7 place it could be would be in -- in other
- 8 assets.
- 9 Q. Okay. And as a matter of
- 10 arithmetic, is it fair to say that is the value
- 11 of the assets due from affiliates was more than
- 12 25 percent of the value of Highland's total
- 13 assets as of 12/31/2019?
- MS. DANDENEAU: Objection to form.
- 15 A. I'm really not doing the mental math
- 16 right now, so I've been going at this depo for
- 17 hours, so I'm really not -- you know --
- 18 Q. All right. No problem.
- 19 A. -- these are millions of dollars.
- Q. Let's look at the Footnote 1,
- 21 please. Do you see there is a reference to the
- 22 Hunter Mountain note?
- A. Yes, I see that in Footnote 1.
- Q. Okay. And that's the reserve that
- 25 was taken against that note?

Page 261 WATERHOUSE - 10-19-21 1 Α. Yes, that is what this indicates. Okay. And were you aware that the 3 Ο. reserve was being taken on that it was? 4 5 Α. I was -- I was aware, yeah, at some point, yes. 6 7 Okay. And are you aware of any reserve being taken with respect to any other 8 note that was issued in favor of Highland? 9 Again, as I testified, we didn't go 10 Α. through an analysis on -- on -- on the other 11 12 notes. 13 Ο. Can we turn --14 Α. I believe -- I believe it says that 15 in Footnote 1, fair value has not been determined with respect to any of the notes. 16 So this footnote -- footnotes, look, 17 there has been no determination. 18 19 The determination was made in Ο. 20 the audited financial statements just six months earlier; right? We saw that earlier? 21 22 That was as of 12/31/18. I mean, Α. things -- circumstances -- there's a bank --23 24 circumstances change, things change -- things

change over time, you know, facts and

25

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1 WATERHOUSE - 10-19-21
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- 2 circumstances change. Again, you have to do an
- 3 analysis.
- 4 Q. Okay. And you do recall that in
- 5 Highland's 2018 financial statement, all of the
- 6 notes issued by affiliates and Mr. Dondero that
- 7 were due at year-end had a fair value equal to
- 8 the carrying value; correct? We looked at
- 9 that?
- 10 A. Yes. That was in the -- in the
- 11 disclosure for the -- for the affiliate notes,
- 12 yes.
- Q. And -- and you were obligated to
- 14 share with PwC any subsequent events between
- 15 the end of 2018 and the date that you signed
- 16 your management representation letter on June
- 17 3rd, 2019; correct?
- 18 MS. DEITSCH-PEREZ: Object to the
- 19 form.
- 20 A. Yes. I -- I signed the
- 21 management, you know, my signature is in the
- 22 management representation letter -- I hope I'm
- 23 answering your question -- that is dated in
- 24 June with the representations made in that
- 25 management representation letter.

Page 263 WATERHOUSE - 10-19-21 1 Ο. Okay. And there was nothing that caused PricewaterhouseCoopers to include in 3 subsequent events any adjustment to the 4 conclusion that the fair value of the affiliate 5 6 notes and the notes issued by Mr. Dondero equaled the carrying value; correct? 7 MS. DANDENEAU: Objection to the 8 form. 9 That is correct. That is what was 10 Α. in the -- in the -- in the footnotes. 11 Okay. So are you aware of anything 12 Q. that occurred between June 3rd, 2019 and 13 14 December 31st, 2019 that would have caused the 15 fair value of the notes to differ from the carrying value? 16 Yeah. Highland filed for 17 bankruptcy, things changed -- I mean, there was 18 a bankruptcy filed in October of -- of -- of 19 20 2019, right, the petition date that we've described earlier. 21 22 I mean, I had a -- I guess looking back naively, I thought we were going to get an 23 24 audit from PwC for year-ended 2019, and when we had discussions with PwC, they were like, are 25

Page 264 WATERHOUSE - 10-19-21 1 you crazy, we're not auditing this. Values change, all these things change, bankruptcy 3 changes the entire scenario. I mean -- and 4 5 they're like, we're not -- we're not touching this. 6 And so, you know, I was like, okay, sorry, I get it, okay, no an audit. 8 9 I mean, it is -- you know, and -you know, and we weren't preparing GAAP 10 financial statements. 11 Again, I didn't know what we were 12 13 doing in relation to our financial statements, 14 but these were the discussions I was having at 15 the time. And yeah, I mean, filing bankruptcy from what I got from outside auditors and 16 others involved changed things dramatically. 17 Okay. Highland wasn't the obligor 18 Ο. under any of the notes that we're talking 19 20 about; correct? 21 Α. No. 22 Ο. So --23 Α. That's right. 24 So can you identify any fact that Ο. would cause the fair value to deviate from the 25

- 1 WATERHOUSE 10-19-21
 - 2 carrying value during the seven-month period
 - 3 between June 3rd and the end of the year, 2019?
 - 4 MS. DANDENEAU: Objection to form.
 - 5 A. No. I mean, I'm putting myself back
 - 6 at that time, right. Hindsight is 2020, but we
 - 7 didn't do an analysis, but we would have done a
 - 8 fulsome analysis and looked at all of the facts
 - 9 and circumstances at the time, but asset values
- 10 change. You know, there could have been a
- 11 market crash in hindsight in 2020, which --
- 12 which affected entities' abilities.
- There could have been all of these
- 14 things, right, that -- that happen. It is --
- 15 it is easy to look back in hindsight, but when
- 16 you are looking at this in -- in realtime, the
- 17 analysis is different, and again, we didn't do
- 18 an analysis.
- 19 Q. Okay. You didn't do an analysis.
- 20 Do I have that right?
- 21 A. I don't -- I don't recall doing one
- 22 or maybe -- you know, I don't recall doing one.
- MR. MORRIS: Okay. I'm going to
- take a break. I may be done, so the time
- now is -- is 4:30 your time. Let's just

```
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                  WATERHOUSE - 10-19-21
 1
          take a short break until 4:40 your time.
                MS. DANDENEAU:
 3
                                 Okay.
                VIDEOGRAPHER: We're going off the
 4
 5
          record, 4:31 p.m.
 6
          (Recess taken 4:31 p.m. to 4:43 p.m.)
 7
                VIDEOGRAPHER: We are back on the
 8
          record at 4:43 p.m.
                MR. MORRIS: I have no further
 9
          questions.
10
                MR. RUKAVINA: Okay.
11
          Mr. Waterhouse, I will go next.
12
13
                        EXAMINATION
14
     BY MR. RUKAVINA:
15
                Sir, my name is Davor Rukavina.
          Ο.
16
     the lawyer for --
                MR. MORRIS: Hey, Davor, just before
17
18
          you begin, I just want to put on the record
19
          Highland's objection to documents that were
20
          produced to me 10 minutes before the
          deposition began.
21
22
                MR. RUKAVINA: What the basis of
          your objection?
23
24
                MR. MORRIS: That they were due
          quite some time ago, and the fact that you
25
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Page 267
                  WATERHOUSE - 10-19-21
 1
          had -- I just think it's appropriate to --
          to dump documents on somebody 10 minutes
 3
          before the deposition. I just think
 4
 5
          that's --
                MR. RUKAVINA: Well, these are
 6
 7
          documents Highland produced. I'm not aware
          of any rule I have to give you advance
 8
          documents when I know for the record that
 9
          other than the exhibits that you sent to us
10
          last week, most of the exhibits you used
11
          today you did not provide to me prior to
12
13
          this deposition.
14
                MR. MORRIS: No, but the documents
15
          were produced by me in -- in litigation,
16
          right?
                MR. RUKAVINA: I'm going to use
17
18
          primarily, John, the documents that you
19
          produced to me today, but you may.
20
                MR. MORRIS: Primarily. I've got --
          I've got my objection. You have got your
21
22
          response. Proceed.
23
          Q.
                Mr. Waterhouse, again, I represent
24
     the advisors, HCMFA and NexPoint Advisors.
25
                Do you understand that?
```

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Page 268
                   WATERHOUSE - 10-19-21
 1
          Α.
                Yes.
                You and I have never met or talked
 3
          Ο.
     before today, have we?
 4
 5
                No, I have -- I have heard your
 6
     voice on calls before.
 7
          O.
                Okay.
                MR. RUKAVINA: Madam Court Reporter,
 8
 9
          I will use a few exhibits today. My
          associate, Mr. Nguyen, will find some way
10
          to get them to you. I don't know how to do
11
          that, but it looks like you guys do.
12
13
                I am going to use numbers as well.
          But to differentiate them from Mr. Morris
14
15
          we're going to mark mine with the prefix A
          for advisors.
16
                Do you understand?
17
18
                COURT REPORTER: Yes.
19
                MR. RUKAVINA: Okay. Perfect.
20
          Ο.
                Okay. So, Mr. Waterhouse, let's
21
     start with those two HCMFA notes that you were
     asked about, one for 5 million and one for
22
     2.4 million.
23
24
                Do you recall those notes?
25
          Α.
                Yes.
```

```
Page 269
                  WATERHOUSE - 10-19-21
 1
          Q.
                Were you ever the CFO of HCMFA?
          Α.
                I don't recall.
 3
                So to the best of your recollection,
 4
          Ο.
 5
     you were still an officer of HCMFA in 2019,
 6
     just that your title was treasurer?
 7
                MR. MORRIS: Object to the form of
          the question. There is no leading here.
 8
 9
          He works for your client.
10
                MS. DANDENEAU: That is not -- that
          is not true.
11
                MR. MORRIS: He's the treasurer --
12
13
          he is the treasurer of your client.
          don't -- I'm going to object every time you
14
15
          try to lead, so...
                MR. RUKAVINA: Totally fine to
16
          object.
17
18
                MR. MORRIS: Okay.
19
          Ο.
                Please answer my question,
20
     Mr. Waterhouse.
                I'm sorry, could you repeat?
21
          Α.
22
     was...
23
          0.
                Yes. You were -- you testified
24
     earlier that in 2019 you were an officer of
25
     HCMFA; correct?
```

Page 270 WATERHOUSE - 10-19-21 1 Α. Yes, I testified that I was the treasurer and I didn't know if that incumbency 3 certificate, you know, was one that appointed 4 5 me as a treasurer, but yes. 6 Ο. I'm just trying to confirm that 7 sitting here today, to the best of your recollection, at that time you were -- your 8 title was treasurer. It was not chief 9 financial officer. 10 I don't recall that being my title. 11 Okay. And in May of 2019, however, 12 Q. 13 I think you testified you were the chief 14 financial officer of the debtor; correct? 15 MR. MORRIS: Objection to the form of the question. 16 17 Α. Yes, I was -- yes. Okay. As such, in May of 2019, did 18 Q. you have the authority, to your understanding, 19 20 to unilaterally loan \$5 million or \$2.4 million to anyone on behalf of the debtor? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 Sorry, can you repeat that? Α. 25 Yes. So in your capacity as the

Q.

- 1 WATERHOUSE 10-19-21
- 2 chief financial officer of the debtor, Highland
- 3 Capital Management, L.P., in May of 2019, did
- 4 you believe that you unilaterally, just Frank
- 5 Waterhouse, had the authority to loan on behalf
- of the debtor to anyone \$5 million and
- 7 \$2.4 million?
- 8 MR. MORRIS: Objection to the form
- 9 of the question.
- 10 A. No.
- 11 Q. Is it because loans of that amount
- would have had to be approved by someone else?
- 13 A. Yes.
- 14 Q. Who in '20 -- in May of 2019, if
- 15 Highland wanted to loan 5 million or
- 16 \$2.4 million to someone, what would have been
- 17 the internal approval procedure?
- 18 MR. MORRIS: Objection to the form
- 19 of the question.
- 20 A. If -- if we had loans of that nature
- 21 that needed to be made due to their size, we
- 22 would have gotten approval from the -- the
- 23 president of Highland.
- Q. And who that was individual?
- 25 A. It was James Dondero.

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1 WATERHOUSE - 10-19-21
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- Q. Okay. Now, I'm going to ask you a
- 3 similar question but for a different entity.
- In May of 2019, as the treasurer of
- 5 HCMFA, did you believe that you unilaterally
- 6 had the ability to cause HCMFA to become the
- 7 borrower of a \$5 million loan and a
- 8 \$2.4 million loan?
- 9 MR. MORRIS: Objection to the form
- of the question.
- 11 A. No.
- 12 O. What would -- what would the
- 13 approval have taken place -- strike that.
- 14 What would the approval process have
- 15 been like in May of 2019 at HCMFA for HCMFA to
- 16 take out a \$7.4 million loan?
- 17 MR. MORRIS: Objection to the form
- of the question.
- 19 A. The process would have been similar
- 20 to what we just discussed on -- for Highland to
- 21 make a loan to others. So, again, you know,
- 22 we -- we would have -- either myself or someone
- 23 on the team would have discussed this with
- 24 the -- the president and owner of -- of HCMFA.
- Q. And who was that individual?

Page 273 WATERHOUSE - 10-19-21 1 That was James -- Jim Dondero. Α. So do I understand that in May of 3 Ο. 2019, on behalf of both the lender, Highland, 4 and the borrower, HCMFA, Mr. Dondero would have 5 6 had to approve \$7.4 million in loans? 7 MR. MORRIS: Objection to the form of the question. 8 9 Α. Yes. You mentioned when Mr. Morris was 10 asking you the NAV error, N-A-V error, with 11 respect to TerreStar, without writing us a 12 13 novel, unless you feel like you have to, can 14 you summarize what that NAV error was? What 15 happened? There was a -- in the Highland 16 Α. Global Allocation Fund, it owned at the time an 17 equity interest in a company called TerreStar. 18 19 And TerreStar is -- at the time was a private 20 company, and it may still be today. Again, I'm putting myself back then as a private company. 21 22 We had -- sorry, I don't mean we -the fund and the advisor used Houlihan Lokey 23 24 to -- to value that investment. And during that time there was some trades that were 25

Page 274 WATERHOUSE - 10-19-21 1 executed at market levels that were much lower than the Houlihan Lokey model. 3 And based on information and 4 5 discussions with the portfolio managers and, 6 you know, principals that were very familiar with TerreStar, it was determined that those 7 trades were non-orderly and they were not 8 considered in the valuation as consulted with 9 Houlihan Lokey and PricewaterhouseCoopers at 10 the time. 11 12 Subsequent to a -- I can't remember 13 the exact circumstances of why the SEC got I think it was due to this -- this 14 15 investment became a material position in the It triggered an SEC, kind of, inquiry. 16 fund. And as part of that inquiry, they questioned 17 the valuation methodology. "They" meaning the 18 SEC. 19 And at the culmination of that 20 process -- this is all summarized -- the value 21 22 that was -- that ultimately had to be used in the fund's NAV was different than -- materially 23 24 different than what the original valuation at Houlihan Lokey provided. 25

Page 275 WATERHOUSE - 10-19-21 1 And given that there was this fund was, as we discussed -- I don't know if we 3 discussed it, but it was an open-ended fund 4 5 that was going -- that was converting to a 6 close-end fund. 7 Due to the fact that it was an open-ended fund, you had to recalculate NAV and 8 see what the impact was on people -- on 9 investors coming in and out of the fund and if 10 there is a detrimental impact and to calculate 11 what that -- what that impact was and if there 12 13 was any amounts owed to the fund pursuant to 14 the error. 15 Were you personally involved Ο. internally at either Highland or HCMFA with 16 these investigations and discussions with the 17 18 SEC? 19 Α. I was. 20 Which other key people or senior Ο. 21 people at Highland were involved, to your recollection? 22 23 Α. Myself, Thomas Surgent, David Klos, 24 Lauren Thedford, Jason Post. 25 Mr. Dondero, was he --Q.

Page 276 WATERHOUSE - 10-19-21 1 I believe Cliff Stoops. I'm trying Α. to think. And maybe that is -- that is -- that 3 is -- that is all kind I can recall at the 4 5 moment. 6 0. Do you recall whether it was 7 determined that the fund suffered losses as a result of this error? 8 The -- the fund -- the --9 Α. because the open-ended nature of the fund, 10 there were losses that were attributable to 11 investors. Meaning they -- they would have 12 redeemed and got a less money or -- or they 13 subscribed in and maybe because they didn't get 14 15 enough shares and then they later sold and then they were harmed in that fashion. 16 And there is -- there is -- there 17 were very -- there were very detailed 18 19 calculations and, you know, all these different 20 scenarios that we had to -- I'm sorry, I keep saying "we" -- that the individuals involved 21 22 had to calculate and quantify. Well, do you recall whether HCMFA 23 Ο. 24 admitted certain fault and liability for this 25 error?

Page 277 WATERHOUSE - 10-19-21 1 I don't recall specifically. Α. Do you recall whether HCMFA caused 3 Ο. any funds to be paid to the investors and the 4 fund the subject of the NAV error? 5 6 Α. Yes. 7 Do you recall the approximate amount Q. of funds, moneys paid to the investors and the 8 9 fund? It was -- it was approximately 10 Α. \$7 million. 11 If I was to suggest 7.8 million, 12 Q. 13 would that ring more true or are you sticking 14 with your original answer? 15 Α. It was -- it was approximately 7 --7 to \$8 million. Again, I don't remember the 16 exact number, but it was in that ballpark. 17 So regardless of whether HCMFA 18 Ο. accepted fault or liability, it caused some 19 20 \$7 million or more to be paid out to affected investors in the fund? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 And I want to make sure I'm Α. understanding your question because there is a 25

Page 278 WATERHOUSE - 10-19-21 1 lot of different entities that are going on to my head. 3 I think what you are saying is based 4 5 on this error, shareholders were harmed by this approximately \$7.8 million -- by approximately 6 \$7.8 million. Is that what you are asking? 7 Yes, sir. 8 Ο. Yes, that was -- again, I don't have 9 Α. the exact numbers. If I take -- it was -- it 10 was in that ballpark, and there is a detail 11 calculation and write-up that could, that --12 13 that exists someplace. 14 Now, at that time, at the time that Ο. 15 the NAV error occurred, was there a contract in 16 place between HCMFA and the debtor pursuant to which the debtor was providing services to 17 18 HCMFA? 19 MR. MORRIS: Objection to the form 20 of the question. 21 Α. Yes. 22 Was that contract generally called a Ο. shared services agreement? 23 24 It was generally called that, but Α. 25 there were -- there were -- I mean, it -- it --

- 1 WATERHOUSE 10-19-21
- 2 it depends on who you talk to, but yes,
- 3 generally, there were -- there are multiple
- 4 agreements.
- 5 Q. Pursuant to one or more of those
- 6 agreements, was the debtor providing certain
- 7 services to HCMFA?
- 8 MR. MORRIS: Objection to the form
- 9 of the question.
- 10 A. Yes.
- 11 Q. And can you at a very high level
- 12 summarize in 2018 and 2019 what those services
- 13 were?
- 14 A. Yes, there was a -- yes.
- Okay. Please -- please go -- go
- 16 through a short summary.
- 17 A. There was a -- a cost reimbursement
- 18 agreement between Highland Capital Management
- 19 Fund Advisors and Highland Capital Management,
- 20 L.P. That agreement was for what we referred
- 21 to as front office services, so investment
- 22 management, things of that nature.
- There was I think what most people
- 24 refer to as the shared services agreement that
- 25 was -- that agreement was between Highland

- 1 WATERHOUSE 10-19-21
- 2 Capital Management Fund Advisors and Highland
- 3 Capital Management for back office services.
- 4 Q. And can you summarize what you mean
- 5 by back office services?
- 6 A. Those services were for accounting,
- 7 finance, tax, valuation, HR, IT, you know,
- 8 legal compliance, things of -- things of those
- 9 nature -- or things of that nature, excuse me.
- 10 Q. So in the spring of 2019, do you
- 11 recall whether HCMFA took the position that it
- 12 was actually Highland that caused the NAV error
- 13 to occur pursuant to the valuation services
- 14 that Highland was providing?
- MR. MORRIS: Objection to the form
- of the question.
- 17 A. I do not recall.
- 18 Q. Did you ever have any discussions
- 19 with anyone, Jim Dondero or anyone in the first
- 20 half of 2019 as to whether Highland, the
- 21 debtor, that is, had any liability to HCMFA
- 22 related to the NAV error?
- MR. MORRIS: Objection to the form
- of the question.
- 25 A. I do not recall.

Page 281 WATERHOUSE - 10-19-21 1 Q. And then you mentioned that the fund was being closed and some compensation related 3 to that. Can you -- can you elaborate? 4 5 were you referring to? 6 Α. Right. So the advisor, pursuant to 7 board approval, put a proposal in front of the shareholders of the Highland Global Allocation 8 Fund to convert it from an open-ended fund to a 9 closed-end fund. 10 So an open-ended fund, when 11 shareholders subscribe to the fund or redeem 12 into the fund, they do it at NAV. 13 When it is -- when you have a 14 15 closed-end fund, closed-end funds are -- are publicly-traded, like on the New York Stock 16 Exchange, exchanges like that, and -- and 17 shareholders or investors, they're not --18 19 they're -- they're not subscribing and 20 redeeming with the fund. They are like shares 21 of Apple. 22 Those shares of the Highland Global 23 Allocation Fund trade on an exchange, and that 24 is how you, you know, that is how, you know, 25 you become an equity owner in the fund or you

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1 WATERHOUSE - 10-19-21
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- 2 sell your shares and you are no longer an
- 3 equity owner.
- 4 As part of that proposal, the
- 5 advisor told shareholders if you -- if you vote
- 6 for this proposal to -- to convert it from an
- 7 open-ended fund to a closed-end fund, we will
- 8 pay you some amounts of money. I forgot -- a
- 9 certain number of points. I think it was
- 10 like -- it was like two to three points or
- 11 something -- something like that.
- 12 Q. Okay. You mentioned when Mr. Morris
- 13 was asking you, going back to those two
- 14 promissory notes, you will recall the 5 million
- and 2.4 million, you mentioned something to the
- 16 effect that Mr. Dondero told -- told you to pay
- 17 some moneys out of Highland. Do you remember
- 18 that discussion with Mr. Morris?
- 19 A. I do.
- 20 Q. So, to the best of your
- 21 recollection, did you have a discussion with
- 22 Mr. Dondero about making some payments in May
- 23 of 2019 out of Highland?
- 24 A. I recall, as I testified earlier,
- 25 that I had a conversation with Mr. Dondero

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1 WATERHOUSE - 10-19-21
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- 2 for -- for these amounts attributable to -- it
- 3 was either the error -- you know, the error,
- 4 and in that conversation he said, go get the
- 5 money from Highland. I believe that is what I
- 6 testified earlier, and that -- that is my
- 7 recollection.
- 8 Q. Do you recall if that was an
- 9 in-person meeting or some other mode for the
- 10 meeting?
- 11 A. I -- I -- I recall that being
- 12 in-person.
- Q. Do you recall if anyone else was
- 14 present, or was it just you and Mr. Dondero?
- 15 A. I recall just he and I.
- 16 Q. And the moneys that he told you to
- 17 find from -- or get from Highland, was that in
- 18 the amount of \$5 million and \$2.4 million?
- 19 MR. MORRIS: Objection to the form
- of the question.
- 21 A. I believe so, but I would have to go
- 22 back and look and see when those moneys were
- 23 actually paid into the -- into the fund and,
- 24 you know, when those transfers were done. If
- 25 they were all done around that same time, then

- 1 WATERHOUSE 10-19-21
- 2 yes, I would say it was -- it was all related
- 3 to that.
- 4 Q. Did Mr. Dondero tell you that those
- 5 funds would be a loan from Highland to HCMFA?
- 6 A. I don't recall.
- 7 MR. MORRIS: Objection to the form
- 8 of the question.
- 9 Q. Now, and forgive me, I'm probably
- 10 the only non-American born here, but I speak
- 11 reasonably well in English. I don't recall,
- does that mean you don't remember or does that
- mean it didn't happen?
- MR. MORRIS: Objection to the form
- of the question.
- 16 A. It -- it means I don't -- I don't
- 17 remember.
- 18 Q. Did Mr. Dondero tell you to have
- 19 those two promissory notes prepared?
- 20 A. I don't recall.
- 21 Q. When you -- again, when you say, I
- 22 don't recall today, that means that sitting
- 23 here today, you just don't remember one way or
- 24 the other. Is that accurate?
- 25 A. Yes.

Case 3:21-cv-00881-X Docume Exhibit-A9 Falge 33.40912446 Page 53 of 192 PageID 54775 Page 285 WATERHOUSE - 10-19-21 1 Is it possible that you, having Q. heard what Mr. Dondero said and seeing funds 3 being transferred, assumed that that would be a 4 loan without him actually telling you that 5 6 would be a loan? 7 MR. MORRIS: Objection to the form of the question. 8 9 Sorry, I want to make sure -- did I Α. ask the amounts that were transferred that I --10 that -- that I assumed that that was a loan? 11 Well, let me -- let me take -- let 12 Q. 13 me try again. So you have established already that 14 15 there were quite a number of promissory notes back and forth -- I'm sorry, quite a number of 16 promissory notes with affiliated companies and 17 individuals owing Highland money; right? 18 19 Α. Yes. 20 And you have established that there Ο. were many transactions and transfers going back 21 22 and forth over the years; right?

24 Α. In -- yes, in my capacity as CFO and 25 my employment, yes, that is -- yes.

23

MS. DANDENEAU: Objection to form.

Page 286 WATERHOUSE - 10-19-21 1 Ο. And that's part of the reason why you just can't remember some of the details 3 today because this -- this happened years ago, 4 and there were a number of transactions. 5 6 that accurate? 7 MS. DANDENEAU: Objection to the form. 8 9 MR. MORRIS: Objection to the form of the question. 10 I mean, I deal with thousands of --11 Α. of -- of -- of transactions, you know, whether 12 13 it has -- the processing of transactions, you know, if it has got, you know, more -- more 14 zeros, you know, behind it than others. 15 16 When you look at thousands of transactions over the years for funds and 17 advisors and -- and, you know, financial 18 19 statements, I mean, it is -- it is very hard 20 going back in -- in -- in my -- you know, 21 14-ish year career at -- at Highland to 22 remember a lot of those details, especially when I don't have any records or books or 23 24 anything like that, and -- and going back many 25 years.

Page 287 WATERHOUSE - 10-19-21 1 And that is fine. That -- that --Q. that is why I asked the question. 3 Is it possible in May of 2019 when 4 5 Mr. Dondero told you to transfer the funds from 6 Highland, you just assumed on your own that 7 those would be loans without him actually telling you that those would be loans? 8 9 Objection to the form MR. MORRIS: of the question. 10 I don't know. 11 Α. I'm sorry, you --12 Q. 13 Α. I said I don't know. 14 Q. Okay. Well, as the -- as the CFO 15 for Highland, if you saw \$7.4 million going out, you would feel some responsibility to 16 account for that, wouldn't you? 17 MR. MORRIS: Objection to the form 18 19 of the question. 20 Α. Yes. Is it fair to say that those would 21 Ο. be in the range large enough to rise up to your 22 level? 23 24 MR. MORRIS: Objection to the form of the question. 25

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1 WATERHOUSE - 10-19-21
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- 2 A. If -- I don't know if I understand
- 3 your question. Those amounts would arise to my
- 4 level where I would be involved or...
- 5 O. You would want to know what a
- 6 transfer for that amount, \$7.4 million, was all
- 7 about, as the CFO of Highland, wouldn't you?
- 8 MR. MORRIS: Objection to the form
- 9 of the question.
- 10 A. Yes, I make it -- I mean, I -- I
- 11 review all sorts of payments, I mean, even
- 12 smaller dollar payments on a periodic basis,
- 13 you know, to -- to -- to understand and to make
- 14 sure that we are paying things in a -- you
- 15 know, in -- in -- in an informed way. And, you
- 16 know -- and we're -- and we're paying things
- 17 pursuant to vendor contracts and things like
- 18 that.
- 19 Q. So as part of that, is it possible
- 20 that seeing \$7.4 million go out you would have
- 21 promissory notes made in order to keep a paper
- 22 trail, assuming that those were loans, when
- 23 perhaps they were never intended to be loans by
- 24 Mr. Dondero?
- MR. MORRIS: Objection to the form

Page 289 WATERHOUSE - 10-19-21 1 of the question. Α. I don't know. As I testified 3 earlier, I had conversations with Mr. Dondero 4 about -- about the -- the -- the moneys that 5 6 were needed for the NAV error. And I recall him saying go get it from Highland -- or get it 7 from Highland. 8 Well, why did you sign those 9 Q. promissory notes and why didn't you have him 10 sign them? 11 MR. MORRIS: Objection to the form 12 13 of the question. 14 Α. I don't know. I don't know. 15 You mentioned earlier that you Ο. typically don't sign promissory notes. Am I 16 remembering your testimony correctly? 17 I mean, promissory notes on behalf 18 of the entities. Not yourself, obviously. 19 20 Α. Yes, that is what I said earlier. Do you recall any other promissory 21 Ο. notes in the million-plus range that you had 22 ever signed before on behalf of any entity? 23 24 There is -- there has been a lot of Α. 25 transactions over the years. I don't -- I

Page 290 WATERHOUSE - 10-19-21 1 don't -- I don't recall generally. I don't --I don't recall. 3 So -- but to the best of your 4 5 recollection, it was on your initiative, 6 following your discussion with Mr. Dondero, that you had someone draft those two promissory 7 notes; is that correct? 8 9 MR. MORRIS: Objection to the form of the question. 10 Yes, we would have -- the team, as I 11 Α. stated earlier, we don't draft promissory 12 13 "The team" meaning the accounting and 14 finance team. 15 So the team would have worked with 16 the legal group at Highland to draft any notes. Do you believe or do you have any 17 recollection as to whether you would have done 18 that pursuant to an email or telephone call or 19 20 in-person meeting? MR. MORRIS: Objection to the form 21 22 of the question. Are you asking if I would have -- if 23 Α. 24 those notes would have been drafted pursuant to 25 an email or phone call?

```
Page 291
                  WATERHOUSE - 10-19-21
 1
          Ο.
                Strike that.
                Do you recall whether you sent an
 3
     email to anyone asking them to draft those two
 4
 5
     promissory notes?
 6
          Α.
                I don't recall because, again,
 7
     once -- I would have instructed -- likely
     instructed the team to -- to work with the
 8
     legal group to draft these documents.
 9
10
                I -- I -- I -- yeah, I didn't -- I
     mean, that is more an operational-type
11
     procedure. So, you know, a manager or a
12
13
     controller or working with legal. You know,
14
     they -- they can certainly handle that task to
15
     get that -- you know, to request that from
16
     legal.
                And who on your team do you think
17
     you would have asked to do that?
18
19
                MR. MORRIS: Objection --
20
          Ο.
                Who would have been the logical
     person or people, if you don't remember their
21
22
     name today?
23
                MR. MORRIS: Objection to the form
24
          of the question.
                It -- it -- there is only two
25
          Α.
```

- 1 WATERHOUSE 10-19-21
- 2 managers of the group. That would have been
- 3 Dave Klos or Kristin Hendrix.
- Dave was the -- one of his duties
- 5 was managing the valuation team, and so he was
- 6 intimately involved with this process. So, you
- 7 know...
- Q. Okay.
- 9 A. I don't recall specifically but, I
- 10 mean, my general -- you know, I -- I -- I
- 11 likely would have talked to Dave first about it
- 12 versus someone like Kristin who hadn't been
- 13 intimately involved.
- Q. And -- and do you have a view as to
- 15 whether it is most likely that you would have
- done that by email or in-person or how would
- 17 you believe you would have communicated that to
- 18 Mr. Klos?
- 19 MR. MORRIS: Objection to the form
- of the question.
- 21 A. I likely would have done that in
- 22 person. Again, if things of this nature
- 23 that -- again, you have to put ourselves back
- 24 to, we have been working on this very stressful
- 25 project for many, many months. And once the

- 1 WATERHOUSE 10-19-21
- 2 go-ahead was to -- you know, we see the light
- 3 at the end of the tunnel with wrapping this up
- 4 and making shareholders whole -- sorry to say
- 5 "we" -- you know, the -- so the folks that are
- 6 involved in it.
- 7 I like to talk to people
- 8 face-to-face and -- and -- and go to -- and go
- 9 to their desk, because that shows if I'm going
- 10 to their desk that -- that is something that I
- 11 want done, you know.
- 12 Q. And do you remember, Mr. Waterhouse,
- 13 getting those two promissory notes in paper
- 14 format or by email before they were executed?
- MR. MORRIS: Objection to the form
- of the question.
- 17 A. I don't recall.
- 18 Q. For whatever was the ordinary course
- 19 back then in May 2019, would you expect to have
- 20 received them only on paper or would you have
- 21 expected to have received them in Word document
- or PDF document by email?
- MR. MORRIS: Objection to the form
- of the question.
- 25 A. I -- I didn't sign -- I signed very

Page 294 WATERHOUSE - 10-19-21 1 few documents via email. I can't say that it 2. never happened, but people either stopped by my 3 office and physically walked in documents for 4 5 signature that we discussed face-to-face. Or documents were -- if -- if --6 7 if -- if -- let's say I wasn't there or I wasn't available, documents were dropped off. 8 I had -- I had some in- and outboxes in front 9 of my -- my office there at the Crescent. 10 Documents would be dropped off for 11 There would be a cover sheet that 12 signature. 13 would be -- have been applied to those 14 documents detailing, you know, who dropped it off, the purpose, why, what time. 15 And then, you know, as I stated, I 16 don't draft documents and I always go to the 17 legal group and the compliance group to make 18 sure that they're in the loop. And there is 19 20 a -- a box or section that says, Has legal reviewed or approved, or something to that 21 22 nature. Again, I don't -- I don't have 23 24 access to that cover sheet anymore, but it

was -- it was something to that effect.

25

Page 295 WATERHOUSE - 10-19-21 1 And my assistant, you know, if she 2. was there, she would review that -- you know, 3 whatever was being dropped off. And if that 4 has legal, you know, reviewed or -- reviewed or 5 approved it, if that wasn't -- if that stuff 6 hadn't been done, it was like she would just 7 tell them like, go -- go -- go to the legal 8 group, because --9 10 Let me -- let me pause --Q. MS. DANDENEAU: Let him finish. 11 MR. MORRIS: Thank you. Go ahead. 12 13 Α. I take -- go to the legal group 14 because that -- that was my -- you know, I 15 didn't -- I didn't review anything that -- that they weren't -- you know, or there wasn't some 16 representation made to me that they had 17 reviewed, approved in some capacity. 18 Again, my -- my -- my goal, as CFO, 19 20 is to provide transparency and make sure that groups like compliance and other things -- and 21 the other group in legal are -- are in -- you 22 know, their -- they're made aware of 23 24 transactions of -- you know, that are crossing 25 my desk.

Page 296 WATERHOUSE - 10-19-21 1 2. Because I'm not in every conversation. They're not in every 3 conversation -- meaning legal compliance -- and 4 5 I just want to make sure that -- that everyone 6 is in sync to, you know, to -- to the extent possible. 7 So if we summarize, you don't 8 Ο. specifically remember signing these two notes, 9 but most likely it would have been that they 10 would have presented -- been presented to you 11 physically on paper? 12 13 MR. MORRIS: Objection to the form 14 of the question. 15 Α. They would -- they would have been presented physically on paper most likely or 16 someone would have left it. But, I mean, 17 again, I don't -- I don't recall. 18 19 I understand. Understand. Ο. 20 When you signed -- when you signed documents, when you personally signed 21 documents, did you typically use a ink pen or 22 did you use a stamp? 23 24 No, I -- I -- I use a -- an -- an Α. 25 ink pen.

Page 297 WATERHOUSE - 10-19-21 1 Q. Do you know -- was there a file at Highland kept anywhere with ink-signed 3 originals of a promissory notes in general or 4 these two promissory notes specifically? 5 6 MR. MORRIS: Objection to the form 7 of the question. Sorry, I just want to make sure I 8 Α. understand your question. Are you saying is 9 there a file somewhere that has ink-signed 10 originals of these two promissory notes? 11 12 Q. Yes. I would -- I would assume they're 13 Α. 14 some place. I mean --15 0. Well, was there a -- was there a place where Highland generally kept originals 16 of promissory notes owed to it? 17 I wouldn't -- no. 18 Α. 19 MR. RUKAVINA: Mr. Nguyen, would you 20 please pull up my A7, alpha 7. These are the two promissory notes, 21 22 Mr. Waterhouse. 23 (Exhibit A7 marked.) 24 And please -- Mr. Waterhouse, please Ο. 25 command my associate to scroll down as you need

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- to, but I want you to take a very close look at
- your two signatures here and tell me whether 3
- you believe, in fact, that you ink signed them 4
- 5 or whether you --
- 6 MS. DANDENEAU: Mr. Rukavina,
- 7 Mr. Waterhouse has the copies.
- MR. RUKAVINA: Perfect. Then you 8
- can take this down, Mr. Nguyen. 9
- These -- these -- these signatures 10 Α.
- are identical, now that I stare at them, and I 11
- 12 mean, they are so close -- I mean, they're
- 13 identical that, I mean, even with my chicken
- scratch signature, I don't know if I can -- you 14
- 15 know, I do this 100 times, could I do that
- 16 as -- as precisely as I see between the two
- 17 notes.
- Well, that is why I ask. 18
- Mr. Waterhouse, now that you have examined 19
- 20 them, does it seem like it is more likely that
- you actually electronically signed these? 21
- 22 MR. MORRIS: Objection to the form
- of the question. 23
- 24 Is -- I don't -- I don't recall Α.
- 25 specifically. As I said before, my assistant

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1 WATERHOUSE - 10-19-21
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- 2 did have a -- an electronic signature, and that
- 3 was used from time to time. It wasn't as
- 4 common practice back in 2019. It definitely
- 5 was more common practice when we had to work
- 6 from home and remotely for COVID because it
- 7 that made it almost impossible to, right,
- 8 provide wet signatures since we're all working
- 9 from home remotely.
- 10 Q. Well, going just for these two
- 11 promissory notes, Mr. Waterhouse, in light of
- 12 your inability to remember any details, are you
- 13 sure you actually signed either or both of
- 14 those notes?
- MS. DANDENEAU: Objection to form.
- 16 A. I don't recall specifically
- 17 signing -- actually physically signing these
- 18 notes. As I said before, I don't recall doing
- 19 that. This -- this looks like my signature,
- 20 but yet these two signatures are identical.
- 21 Q. So you don't recall physically
- 22 signing them, and I take it you don't recall
- 23 electronically signing them either?
- A. I don't recall. You know, Highland
- 25 has all my emails. If that occurred, you know,

Case 3:21-cv-00881-X Docume Dxhirbit-A9 Paled 3490912446 Page 68 of 192 PageID 54790 Page 300 WATERHOUSE - 10-19-21 1 you know, I don't have any of these records is what I'm saying. I don't have any of those 3 records. 4 That is why I'm asking you these 5 0. 6 questions in great detail because I don't have I'm trying to -- I'm hoping that 7 those emails. you will give me some names or some details so 8 I can go look for more emails, but again, you 9 don't remember any -- any individual, other 10 than Mr. Dondero that we've discussed, you 11 don't remember any individual with whom you 12 13 discussed these promissory notes prior to their 14 execution? MR. MORRIS: Objection to the form 15 of the question. 16 I don't recall discussing it with 17 Α. anybody else. 18 19 Ο. Okay. 20 Α. I mean, prior --I understand. 21 Ο. 22 You know, there was no one else --Α. there was no one else in that meeting that I 23

Now, when you established that by

24

25

recall with Mr. Dondero.

Q.

Page 301 WATERHOUSE - 10-19-21 1 May of 2019 --2. Α. And -- and from what I recall, and 3 the reason why I was by myself is -- is, you 4 know, I don't -- I don't want to speculate, I'm 5 6 sorry. Okay. We have established that by 7 May of 2019, in your view, the liabilities of 8 9 HCMFA exceeded its assets; correct? 10 Yeah. I mean, again, I don't have Α. financial statements in front of me, but I 11 think, if I recall, we'd have to go through the 12 13 testimony with Mr. Morris, I believe that was 14 the case. 15 In fact, you will recall that in Ο. April of 2019, Mr. Dondero signed a document 16 that extended the demand feature of two prior 17 notes to May 31, 2019. Do you recall that? 18 19 MS. DEITSCH-PEREZ: I think you 20 might -- maybe have the court reporter read that back. You might have misspoke. 21 22 (Record read.) 23 MR. RUKAVINA: And I did misspeak. 24 I meant to say to May 31, 2021. Ο.

25

you recall that, sir?

```
Page 302
                  WATERHOUSE - 10-19-21
 1
                MR. MORRIS: Objection to the form
          of the question.
 3
                Yes.
 4
          Α.
 5
                MR. RUKAVINA: And, Mr. Nguyen, just
 6
     so that the record is clear, will you please
 7
     pull up my Exhibit Alpha 10, A10.
                 (Exhibit A10 marked.)
 8
                You don't have this one in front of
          Q.
 9
     you, Mr. Waterhouse? This is the one that
10
     Mr. Morris used earlier. Do you see that
11
     document, sir?
12
13
          Α.
                Yes, I do.
                And this is what you were testifying
14
          Q.
     about before when Mr. Morris was asking you.
15
     Do you remember that?
16
17
          Α.
                Yes.
                So here is my question for you,
18
          Q.
     Mr. Waterhouse: As the chief financial officer
19
20
     of Highland, was it prudent for Highland less
     than three weeks later to be lending
21
22
     $7.2 million to an insolvent entity that
     couldn't even then pay its debts back to
23
24
     Highland?
25
                MS. DANDENEAU: Objection to form.
```

```
Page 303
                  WATERHOUSE - 10-19-21
 1
                MR. MORRIS: Objection to the form
          of the question.
 3
                Sorry, I just want to make sure --
 4
          Α.
     are you asking me, did you say, was it prudent
 5
     for Highland to loan $7.4 million to HCMFA a
 6
 7
     few weeks after this document was executed?
                Yes, and at a time when HCMFA's
 8
          Ο.
     liabilities exceeded its assets.
 9
10
                MR. MORRIS: Objection to the form
          of the question.
11
                I don't -- it is odd. I don't know.
12
          Α.
13
                MR. RUKAVINA: You can take this
14
     exhibit down, Mr. Nguyen.
15
          0.
                Do you recall asking anyone,
     Mr. Dondero or -- or anyone outside as to
16
     whether Highland ought to be lending
17
     $7.4 million to HCMF regarding HCMF's
18
     creditworthiness?
19
20
                MR. MORRIS: Objection to the form
          of the question.
21
                I don't recall.
22
          Α.
                Did you receive personally any of
23
          Q.
24
     that $7.4 million?
25
          Α.
                No.
```

```
Page 304
 1
                  WATERHOUSE - 10-19-21
          Ο.
                Did you even --
                MR. MORRIS: I didn't hear that
 3
          question, sir.
 4
 5
                MR. RUKAVINA: The one that he
 6
          answered, John, or my new one?
                MR. MORRIS: No, no, your question,
 7
 8
          Davor.
                MR. RUKAVINA: I had asked him
 9
10
          whether he received any of the
          $7.4 million. He said no.
11
                MR. MORRIS: Yeah. I thought there
12
          was a question after that. Maybe I was
13
          mistaken. I apologize.
14
15
                MR. RUKAVINA: I had started a new
          question, so here, let me start the new
16
          question again.
17
                Did you personally receive any
18
          Ο.
     direct benefit from those two notes for
19
     $7.4 million?
20
21
          Α.
                No.
22
                Did you ever personally consider
          0.
     yourself obligated to repay either or both of
23
24
     those notes?
25
          Α.
                No.
```

Page 305 WATERHOUSE - 10-19-21 1 2. MR. RUKAVINA: Pull up those notes again, Mr. Nguyen. 3 You can have them in front of you, 4 5 Exhibit 7, Mr. Waterhouse, whatever is easier 6 for you. If you go to your signature page, my 7 question to you is, why did you not include your title as treasurer by your name, Frank 8 9 Waterhouse? 10 MS. DANDENEAU: Objection to form. Α. I didn't -- I didn't draft this 11 document. 12 13 So you relied on whoever drafted it 14 to draft it correctly? 15 Α. Yes. Okay. But back then when you signed 16 Ο. this, did it ever cross your mind that you were 17 the maker on these notes? 18 19 Α. No. 20 Back then when you signed this Ο. document, did it ever cross your mind that you 21 22 could be a co-obligor on these notes? I didn't receive \$7.4 million, 23 Α. No. 24 I mean... 25 But can you say that HCMFA received Q.

2 \$7.4 million?

1

3 A. I would have to go back and look and

WATERHOUSE - 10-19-21

- 4 check in, you know, the -- the financial
- 5 records and the bank statements.
- 6 MR. RUKAVINA: You can take this
- 7 exhibit down, Mr. Nguyen.
- 8 Q. Mr. Waterhouse, I'm not trying to be
- 9 a smart-ass, but if the law says that because
- 10 of the way that you signed this promissory
- 11 note, if that is what the law says, that that
- 12 made you personally -- personally liable, then
- 13 you would agree with me that that was never
- 14 your intent?
- MR. MORRIS: Objection to the form
- of the question.
- 17 A. That was never -- I wouldn't sign a
- 18 note and not get consideration in return.
- 19 Q. So putting all other issues aside,
- 20 if the law -- if the law says that you were
- 21 liable for those notes because of how you
- 22 signed them, then would you agree with me that
- 23 these notes are a mistake?
- MR. MORRIS: Objection to the form
- of the question.

```
Page 307
                  WATERHOUSE - 10-19-21
 1
                MS. DANDENEAU: Objection to the
          form.
 3
          Α.
 4
                Yes.
 5
                So do you agree with me that it's
          Ο.
 6
     odd -- I think that is the word you used --
 7
     that Highland would be loaning $7.4 million a
     few weeks after that extension to an entity
 8
     whose liabilities exceeded its assets, and you
 9
     would agree with me that it was never your
10
     intention to be in any way liable for these two
11
12
     promissory notes; correct?
13
                MR. MORRIS: Objection to the form
14
          of the question.
15
                Sorry, you -- you asked a lot there.
          Α.
                MR. RUKAVINA: I will strike it and
16
     I will move on.
17
                Let's go to -- pull up Exhibit 9,
18
     please Mr. Nguyen -- Alpha 9, I'm sorry, Alpha
19
     9, A9.
20
                 (Exhibit A9 marked.)
21
22
                Sir, take a moment to look at this,
          Ο.
     but this is an email, and you will see attached
23
24
     July 31, 2020 affiliate notes.
25
                Do you see that attachment?
```

```
Page 308
                   WATERHOUSE - 10-19-21
 1
          Α.
                Yes.
                Okay. And do you see an entry for
 3
          Ο.
     Highland Capital Management Fund Advisors?
 4
 5
                MR. MORRIS: I'm sorry, hold on.
 6
          Where are you looking?
 7
                MR. RUKAVINA: Last page, John.
                MR. MORRIS: Is it the page on the
 8
 9
          screen?
10
                MR. RUKAVINA: Oh, I'm sorry.
          Mr. Nguyen just did it. Yes, the last page
11
12
          there.
13
                MR. MORRIS: Thank you.
                Do you see an entry there for HCMFA?
14
          Q.
15
          Α.
                Yes.
                About $10.5 million.
16
          Ο.
                Do you see that?
17
                I do.
18
          Α.
19
                And, now, do you have any
          Ο.
20
     explanation for why if HCMFA owed $7.4 million,
     plus the 5.3 million that had been extended,
21
     why that amount was only 10.5 million?
22
23
          Α.
                I don't know.
                               Okav.
24
                MR. RUKAVINA: Close this one and
          pull up, Mr. Nguyen, the schedules,
25
```

```
Page 309
 1
                   WATERHOUSE - 10-19-21
          schedule of assets. What exhibit is this
          of ours, Mr. Nquyen?
 3
                              This is All.
                MR. NGUYEN:
 4
 5
                MR. RUKAVINA: Oh, this will be A11.
                 (Exhibit All marked.)
 6
 7
                You don't have this in front of you,
          Q.
     Mr. Waterhouse?
 8
                Okay.
 9
          Α.
                This is what Mr. Morris used
10
          Ο.
               Do you remember looking at this with
11
     Mr. Morris?
12
13
          Α.
                Yes.
14
                MR. RUKAVINA: You might have to
15
          zoom in a little. Okay.
16
          Ο.
                Now, I see Affiliate Note A, B, and
17
     С.
                Do you have any recollection as to
18
19
     why the names of the affiliates are omitted?
20
          Α.
                I don't. I testified earlier that,
     you know, the team worked with DSI in providing
21
     these. I -- I don't -- I don't know.
22
                Can we deduce -- is it logical to
23
          Ο.
24
     deduce that Affiliate Note A would be NexPoint
     given its size of $24.5 million?
25
```

```
Page 310
                  WATERHOUSE - 10-19-21
 1
                MR. MORRIS: Objection to the form
          of the question.
 3
                I mean, it -- it is a -- it is -- it
 4
          Α.
 5
     is approximate.
 6
          0.
                Well, can we -- can we deduce -- or,
 7
     I'm sorry, strike that.
                Can you, sitting here today,
 8
     logically conclude that Affiliate Note B or C
 9
     represents HCMFA?
10
                MR. MORRIS: Objection to the form
11
          of the question.
12
13
          Α.
                I don't know. I don't know.
14
     can't.
15
          0.
                Okay. As of the petition date, we
     have established that HCMFA, under promissory
16
     notes, owed $7.4 million and $5.3 million to
17
     the debtor; correct?
18
                MR. MORRIS: Objection to the form
19
20
          of the question.
21
          Α.
                Yes.
                Okay. And by my reckoning, that
22
          Ο.
     would be somewhere approaching $13 million.
23
24
                MR. MORRIS: Objection to the form
          of the question.
25
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Page 311 WATERHOUSE - 10-19-21 1 It would be \$12.7 million. Is that O. generally correct? 3 Sorry, the amounts were 7.4, 5.3. 4 Α. 5 Ο. Yes. 6 Α. Okay. Yeah, that -- I can 7 do that math, yes. Do you have any explanation or any 8 Ο. understanding of why there is no similar entry 9 listed here on the schedule of assets filed 10 with the bankruptcy court? 11 MR. MORRIS: Objection to the form 12 13 of the question. 14 Α. I don't know. We have to look at 15 the supporting schedules, like I talked about other -- presumably there is -- there is a 16 build to the schedule that would provide the 17 detail. 18 19 Well, that was going to be my next Ο. 20 question. You anticipated it. 21 MR. RUKAVINA: You can -- you can 22 take this down, Mr. Nguyen. Do you believe that whenever you and 23 Ο. 24 your team provided the underlying data to the 25 financial advisor that the actual names of the

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1 WATERHOUSE - 10-19-21
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- 2 affiliates for Affiliate Note A, B, and C would
- 3 have been listed there?
- 4 A. Are you asking we provided the names
- 5 to the financial advisor? I don't -- I don't
- 6 understand who the financial advisor is.
- 7 Q. I'm sorry, DSI.
- 8 Let me ask the question this way,
- 9 Mr. Waterhouse.
- 10 Whenever you provided information
- 11 about the affiliate notes to DSI, do you
- 12 believe that you would have included the actual
- 13 names of the affiliates, you or your team, or
- 14 that you would have done the Affiliate Note A,
- 15 Note B, Note C?
- MR. MORRIS: Objection to the form
- of the question.
- 18 MS. DANDENEAU: Objection to the
- 19 form.
- 20 A. We -- like I testified earlier, when
- 21 we were -- we gave everything to -- to DSI. We
- 22 were giving all of our records, all of our
- 23 files, everything to DSI. We weren't redacting
- information or saying, hey, here is a note,
- 25 here is Affiliate Note A or B.

Page 313 WATERHOUSE - 10-19-21 1 2. I mean, it was -- our job and our focus -- and I testified in court back in 2019; 3 right -- was -- was to be transparent and, you 4 5 know, get DSI up to speed on -- on the matters 6 at Highland. So I can't see us redacting at 7 that point. MR. RUKAVINA: Mr. Nguyen, will you 8 9 please pull up Mr. Morris' Exhibit 36. 10 Just the very first page, the very top email. You might zoom in a little bit. 11 Now, you recall being asked about 12 Q. 13 this by Mr. Morris? Yes, I do. 14 Α. 15 And you wrote: The HCMFA note is a Ο. 16 demand note. 17 You wrote that; right? 18 Α. Yes. 19 And, in fact, weren't there by that Ο. 20 point in time several notes? Yes, there were. Again, I don't --21 Α. I don't remember everything specifically. I 22 23 mean --24 Q. I understand. I understand. 25 So this is an example where -- where

Page 314 WATERHOUSE - 10-19-21 1 you might have made a mistake by referring to a singular instead of a plural; right? 3 Α. Yes. 4 5 Ο. Okay. And you -- you wrote -- a 6 couple of sentences later, you wrote: There was an agreement between HCMLP and HCMFA the 7 earliest they could demand is May 2021. 8 9 You wrote that; right? 10 Α. Yes. But I think you -- you agreed with 11 Ο. Mr. Morris that that can't possibly apply to 12 13 the May 2019 notes, can it? MR. MORRIS: Objection to the form 14 15 of the question. That is not what he testified to. 16 Let me ask -- let me ask a different 17 Ο. question. 18 19 Sitting here today -- or if you can 20 answer me from your memory on October 6, 2020 -- did the April acknowledgment that 21 extended the maturity date apply to the 22 May 2019 notes also? 23 24 I don't recall specifically. Α. 25 Well, you recall that the notes that Q.

Case 23905007-500 85-40-16-1 107/19/210/29/21-10/29/210/29/21321:5725-5-315-5-327 Case 3:21-cv-00881-X Docume Dxhirbit-A9 Paled 3640912446 Page 83 of 192 PageID 54805 Page 315 WATERHOUSE - 10-19-21 1 you signed were demand notes; right? Α. Yes. 3 Do you find it logical, based on 0. 4 5 your experience, that had they intended to have 6 a different or a set maturity date, you would have instructed that that set maturity date be 7 included instead of a demand feature? 8 9 Objection to the form MR. MORRIS: of the question. 10 Sorry, just want to make sure I 11 Α. understand. You are saying that -- that the 12 13 \$5 million note, the \$2.4 million note, if 14 those were supposed to be a term note, that I 15 would have made sure that those were a term 16 note? I'm saying -- I'm saying, 17 18 Mr. Waterhouse, that on May the 2nd and May the 19 3rd, 2019, if you intended that those two 20 promissory notes could not be called until May 2021, would you have included such language in 21 22 those two promissory notes?

- MR. MORRIS: Objection to the form
- of the question.
- 25 A. I guess -- I'm sorry, I don't recall

Page 316 WATERHOUSE - 10-19-21 1 putting language in those May notes. I don't remember what language you are referring to. 3 Well, let's read this again. 4 Ο. 5 There was an agreement between HCMLP 6 and HCMFA the earliest they could demand is May 7 2021. Do you recall that agreement? 8 9 Α. Yes, that was the agreement we looked at earlier; correct? 10 Okay. Yes. 11 Ο. Do you -- do you understand now that 12 13 that agreement that we looked at earlier also 14 applied to the May 2019 notes that you signed? 15 Α. I don't -- I don't know. But as of October 6, 2020, you're 16 Ο. writing that there is one demand note and 17 you're categorizing that demand note as not 18 19 being demandable on May 2021; correct? 20 Α. Yes. And you know now that you made at 21 Ο. least one mistake in this email; correct? 22 23 MR. MORRIS: Objection to the form 24 of the question. 25 Α. Yes.

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Page 317
                  WATERHOUSE - 10-19-21
 1
                MR. RUKAVINA: You can pull this
          down, Mr. Nguyen.
 3
                So, Mr. Waterhouse, you don't
 4
     remember Mr. Dondero telling you to make these
 5
 6
     loans or not. HCMLP was loaning $7.4 million
 7
     to someone that their assets were less than
     their liabilities.
 8
 9
                We don't see on the July list of
     notes, where there is $12.7 million of notes,
10
     we don't see that on the bankruptcy schedules,
11
     and we have this Exhibit 36 where you are
12
13
     confused.
                Are you prepared to tell me, sir,
14
15
     today that you might have made a mistake in
     executing those two promissory notes?
16
                MR. MORRIS: Objection to the form
17
18
          of the question.
                I -- I don't know.
19
          Α.
20
                And if it turns out that you're
          Q.
     personally liable for those promissory notes,
21
     it would certainly be a mistake, wouldn't it?
22
                MS. DANDENEAU: Objection to the
23
24
          form.
25
                MR. MORRIS: Join.
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Page 318 WATERHOUSE - 10-19-21 1 Α. Yes. If Mr. Dondero testifies that he 3 Ο. never told you to make these loans, would you 4 5 disagree with his testimony? 6 MR. MORRIS: Objection to the form 7 of the question. Like I testified earlier with my 8 Α. conversation with Mr. Dondero, all I recall is 9 he said, get the money from Highland. 10 And if Mr. Dondero testifies that 11 he, in consultation with other senior personnel 12 13 at Highland, decided that Highland needed to pay HCMFA \$7.4 million as compensation for the 14 NAV error and not a loan, would you have any 15 16 reason to disagree with Mr. Dondero? MR. MORRIS: Objection to the form 17 18 of the question. If that was -- if that was his 19 Α. 20 intent, yes, it would -- I would --21 Ο. Do you have any reason to disagree with him? 22 23 MR. MORRIS: Objection to the form 24 of the question. If that was his intent, I don't 25 Α.

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1 WATERHOUSE - 10-19-21
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- 2 know. I don't know how I disagree with that.
- 3 Q. And just to confirm, you don't
- 4 remember ever asking Mr. Dondero whether you
- 5 should have two promissory notes prepared?
- 6 A. No.
- 7 Q. And you don't remember discussing
- 8 with Mr. Dondero what the terms of those two
- 9 promissory notes should be?
- 10 A. I don't recall -- I testified all I
- 11 recall is he said, get the money from Highland.
- 12 I don't -- the -- the terms of the note, I
- don't recall ever having a discussion around
- 14 the terms of the note, but since I don't draft
- 15 the notes, that -- there could have been a
- 16 conversation with other people later.
- 17 Q. Do you have any memory of whether
- 18 after the notes were drafted, but before you
- 19 signed them, that you communicated with
- 20 Mr. Dondero in any way to just confirm or -- or
- 21 get his blessing or ratification to signing
- 22 those notes?
- MR. MORRIS: Objection to the form
- of the question.
- 25 A. I don't recall.

Page 320 WATERHOUSE - 10-19-21 1 Q. Again, the only thing you remember, sitting here today, was Mr. Dondero said, get 3 the money from Highland, and that is it, that 4 5 is all you remember? 6 MR. MORRIS: Objection to the form 7 of the question. I testified to that several times. 8 Α. This was over two years ago. A lot has 9 happened. That is all I recall. 10 And help me here. I'm not very 11 Ο. technologically astute. When you -- and I -- I 12 13 recognize that you do it rarely, but when you 14 sign a document electronically, do you believe 15 that there is an electronic record of you 16 having authorized or signed a document electronically? 17 MR. MORRIS: Objection to the form 18 19 of the question. 20 Α. I -- I don't know the tech answer to that, but, you know, since I don't have -- I 21 22 don't ever attach my signature block electronically, my assistant would have done 23 24 that, and if that is done over email like we did several times -- you know, multiple, 25

- 1 WATERHOUSE 10-19-21
- 2 multiple times over COVID, she would attach my
- 3 signature block and then email it out to
- 4 whatever party.
- 5 Q. What was your assistant's name in
- 6 May 2019?
- 7 A. It was Naomi Chisum.
- Q. Is she the only one? I'm sorry, was
- 9 she your only assistant that would have maybe
- 10 facilitated logistically something like you
- 11 just described?
- 12 A. You know, she was out on maternity
- 13 leave at some point. I don't -- I don't recall
- 14 those dates where she was out for maternity
- 15 leave. There was -- there were folks backing
- 16 her up. I don't recall specifically who
- 17 those -- who those, you know, administrative
- 18 assistants were, and I don't recall
- 19 specifically if she was out during this time on
- 20 maternity leave.
- I do know that that she was out for
- 22 a period of time, or who knows, or she could
- 23 have been on vacation that day or, you know, I
- 24 don't know.
- 25 Q. Switching gears now, the two

Page 322 WATERHOUSE - 10-19-21 1 complaints that have been filed that is against HCMFA and NexPoint, did you see any drafts of 3 those complaints before they were filed? 4 5 MR. MORRIS: Objection to the form 6 of the question, and to the extent that you 7 had any communications with counsel or you were shown drafts of the complaints by 8 counsel while you were employed by 9 Highland, I direct you not to answer. 10 I -- I reviewed documents yesterday 11 with counsel here. I believe that is the first 12 13 time I have ever seen those. 14 Okay. Did you ever discuss with Ο. Mr. Seery these two lawsuits before or after 15 they were filed? 16 I don't recall. 17 Α. Were you ever interviewed by legal 18 Q. counsel, to your knowledge, about these 19 20 promissory notes before the complaints were Without going into what was said, were 21 you ever interviewed by legal counsel? 22 23 MR. MORRIS: Objection to the form 24 of the question. I don't recall. 25 Α.

Case 3:21-cv-00881-X Docume Exhibit-A9 Falge 3720912446 Page 91 of 192 PageID 54813 Page 323 WATERHOUSE - 10-19-21 1 Obviously with COVID, it changed, Ο. but -- but before COVID, did you used to meet 3 with Mr. Seery from time to time in-person? 4 Yeah, I mean, so before COVID -- so 5 6 we're talking kind of late March, early April, right, there was about -- I don't remember the 7 specific date when the board for Highland was 8 appointed. I believe it was around February of 9 2020, so maybe there was a month-and-a-half, 10 two-month window where we were meeting 11 in-person or, you know, like we were actually 12 13 in the office, excuse me, we were in the office. 14 15 And, you know, when they were first appointed, the board members and Mr. Seery 16 were -- were definitely down here more 17 18 in-person. 19 Did you ever see Mr. Seery taking Ο. 20 written notes of -- of his meetings with you or others? 21 22 I don't recall. Α. Do you recall on any Zoom or video 23 Ο. 24 conference with Mr. Seery, seeing him take

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notes, written notes?

Case 3:21-cv-00881-X Docume Dxhibit-A9 Paled 3720912446 Page 92 of 192 PageID 54814 Page 324 WATERHOUSE - 10-19-21 1 The Zoom calls we had, I don't Α. recall having seen video or, you know, or if it 3 was on Zoom, I just remember it being -- well, 4 5 no, you know what, there were some -- you know, 6 I take that back. 7 So there were -- there were some times that I did remember seeing Mr. Seery 8 on -- on some of the Zoom calls. 9 Well, let me --10 Ο. I don't -- sorry, I'm thinking. 11 thinking -- I'm going back. I'm trying to 12 13 process this. I can make it much quicker, 14 Q. 15 Mr. Waterhouse. I have heard -- I have heard that Mr. Seery is a copious note taker. 16 Do you have any knowledge about 17 that? 18 19 Α. No. 20 Okay. Switching gears yet again, Q. and this will be last theme. Do you need a 21 restroom break, or are you good to go for 22 another half an hour? 23

MS. DEITSCH-PEREZ: I need a

restroom break.

24

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Page 325
                  WATERHOUSE - 10-19-21
 1
                MR. RUKAVINA: Can we make it five
          minutes?
 3
                THE WITNESS: Five minutes would be
 4
 5
          great.
 6
                VIDEOGRAPHER: We're going off the
 7
          record at 5:53 p.m.
          (Recess taken 5:53 p.m. to 5:59 p.m.)
 8
 9
                VIDEOGRAPHER: We are back on the
          record at 5:59 p.m.
10
                Mr. Waterhouse, I had asked you
11
          Ο.
     earlier about contracts between HCMFA and the
12
13
     debtor, and now I'm going to talk about
14
     contracts between the debtor and NexPoint
15
     Advisors.
                Okay?
16
          Α.
                Okay.
                Now, were there contracts similar to
17
          Ο.
     the ones with HCMFA that NexPoint had in the
18
19
     nature of employee reimbursement and shared
20
     services?
                Yes, they -- NexPoint Advisors and
21
          Α.
22
     Highland Capital Management Fund Advisors had
     cost reimbursement and shared services
23
24
     agreements with Highland Capital Management,
25
     L.P.
```

Page 326 WATERHOUSE - 10-19-21 1 And was that shared services Ο. agreement, to the best of your understanding, 3 in place as of December 31, 2020? 4 It was -- it was terminated at some 5 Α. 6 point, and I remember the contracts had 7 different termination dates, but I think the -the date of termination was January 31st of 2021, after the termination was put in. 9 10 So yeah, it would be in place at the end of the year of December -- it would be in 11 place at December 31st, 2020. 12 13 And pursuant to that agreement as of 14 December 31st, 2020, was the debtor providing 15 what you would describe as back office services to NexPoint? 16 Yes. 17 Α. 18 Ο. Would those have included accounting services? 19 20 Α. Yes. And as part of those accounting 21 Ο. services, would the debtor have assisted 22 NexPoint with paying its bills? 23 24 MR. MORRIS: Objection to the form of the question. 25

Page 327 WATERHOUSE - 10-19-21 1 Α. Yes. So let's break that up. You were a 3 Ο. treasurer of NexPoint as well in December of 4 5 2020? 6 MR. MORRIS: Objection to the form 7 of the question. Α. Yes. 8 9 Okay. And in December of 2020, did Q. NexPoint have its own bank accounts? 10 Α. Yes. 11 And did it use those bank accounts 12 Q. 13 to pay various of its obligations? 14 Α. Yes. 15 Q. Did employees of the debtor have the ability to cause transfers to be made from 16 those bank accounts on behalf of NexPoint? 17 18 Α. Yes. And is that one of services that the 19 0. 20 debtor provided NexPoint, basically ensuring that accounts payable and other obligations 21 would be paid? 22 23 Α. Yes. 24 MR. MORRIS: Objection to the form of the question. 25

Page 328 WATERHOUSE - 10-19-21 1 Q. You answered yes? Α. Yes. 3 And the payments, though, whose 4 Ο. funds would they be made from? 5 From the bank account of NexPoint 6 Α. 7 If they were NexPoint advisor Advisors. obligations, it would be made from NexPoint 8 Advisors' bank account. 9 So let's pull up Exhibit Alpha 1. 10 You should have that -- it is my Tab 1 or my 11 Exhibit 1. 12 13 (Exhibit A1 marked.) 14 Q. So this is a -- this is a series of 15 emails, Mr. Waterhouse. Let's look at the first page here, November 25, 2020, between 16 Kristin Hendrix and yourself. 17 18 Do you see that, sir? 19 Α. I do. 20 And do you see where Ms. Hendrix Q. writes: 21 NPA. 22 Do you know what NPA stood for? 23 Α. Yes. 24 Q. And what does it stand for? NexPoint Advisors. 25 Α.

Page 329 WATERHOUSE - 10-19-21 1 Ο. And was that how you-all internally at Highland refer to NexPoint Advisors, L.P.? 3 I mean, yes, amongst other things. 4 Α. And she writes at the bottom of her 5 Ο. 6 email: Okay to release? 7 Do you see that? Α. Yes, I do. 8 9 Q. So what --10 MR. MORRIS: Hold on one second. Okay. Go ahead. 11 MR. RUKAVINA: 12 Yeah. 13 0. So what is -- what is Ms. Hendrix 14 here on November 25 asking of you? 15 Α. She is asking me -- so she -- these 16 are -- these are payments -- typically we would do an accounts payable run every week at the 17 end of every Friday. But looking at this date, 18 19 it is Wednesday, November 25th, which means, to 20 me, it is likely Thanksqiving weekend. So this is the day before 21 22 Thanksqiving, so this is the last kind of -kind of day before the holidays and vacation 23 24 and things of that nature. So it is effectively the Friday of that week. 25

Page 330 WATERHOUSE - 10-19-21 1 2. So she is -- she is putting in all the payments for the week because we batch 3 payments weekly. And these are the payments 4 5 that go out that week, and she is informing me 6 of the payments and -- you know, again, at the bottom of the email, she is asking for my okay 7 to -- to release these payments in the wire 8 system. 9 So these would be accounts payable 10 of NexPoint? 11 I mean, it would be accounts payable 12 Α. 13 for all of these entities listed on this email. 14 Q. And who was Ms. Hendrix employed by 15 in November and December of 2020? Highland Capital Management. 16 Α. Okay. So -- so part of the services 17 Ο. that NexPoint had contracted with was for 18 Highland to ensure that NexPoint timely paid 19 20 its accounts payable; is that accurate? MR. MORRIS: Objection to the form 21 22 of the question. You have got to be kidding me. 23 24 Is that accurate? Ο. 25 Α. Yes.

Page 331 WATERHOUSE - 10-19-21 1 And did NexPoint rely on employees Ο. of the debtor to ensure that NexPoint's 3 accounts payable were timely paid? 4 MR. MORRIS: Objection to the form 5 6 of the question. 7 Α. Yes. MR. RUKAVINA: Let's flip to the 8 next page, Mr. Nguyen, if you will please 9 scroll to the next page. 10 So this is an email similar to the 11 Ο. prior one, November 30th. 12 13 Do you see where it says, NPA HCMFA, USD \$325,000 one-day loan? 14 15 Do you see that, sir? I do. 16 Α. Do you have any memory of what that 17 Ο. 18 was? I don't recall what that -- what 19 Α. 20 that payment was for. Did it sometimes occur that one 21 Ο. advisor would, on very short-terms, make loans 22 to another advisor? 23 24 Α. Yes. This -- this -- this occurred from -- from -- from time to time. It actually 25

Page 332 WATERHOUSE - 10-19-21 1 looking at -- I'm -- I'm looking at the date of 2. this email. It is November 30th. It is the 3 last day of the month. 4 HCMFA has obligations it needs to 5 pay to its broker-dealer, which is HCFD. 6 it likely was short funds to make those 7 obligations under that -- under its agreement, 8 and so it provided a one-day loan because on 9 the next business day on 12/1 -- or the next 10 business day in December, it would receive 11 management fees from the underlying funds that 12 13 it managed and it would be able to pay back 14 that loan to NexPoint Advisors. 15 0. So -- so here Ms. Hendrix was 16 seeking your approval to transfer \$325,000 from NexPoint to HCMFA for a one-day loan; is that 17 18 correct? That is correct. 19 Α. 20 Let's flip to the next page, sir. Q. MR. RUKAVINA: And, Mr. Nguyen, if 21 22 you will please scroll down. 23 Ο. Now we have as an entry for 24 \$325,000, 11/30 loan payment. 25 Do you see that, sir?

Page 333 WATERHOUSE - 10-19-21 1 Α. Yes. And that is probably the loan that 3 Ο. was approved on the prior page? 4 5 Α. Yes, most likely. 6 Ο. So is it also true, sir, that in 7 addition to accounts payable debtor employees would be assisting NexPoint with respect to 8 paying back its debt? 9 10 MR. MORRIS: Objection to the form of the question. 11 I mean, yes, for loans of this 12 Α. 13 nature, yes. 14 Well, what about long term loans? Ο. 15 Was it reasonable for NexPoint to expect debtor employees to ensure that NexPoint timely paid 16 its obligations under long-term notes? 17 MR. MORRIS: Objection to the form 18 19 of the question. 20 MS. DANDENEAU: Objection to form. I mean, that is one of the things 21 Α. 22 that the Highland personnel did provide to the advisors. Yes, we would -- we would -- over 23 24 the years, yes, we -- we -- we did do that generally. Again, I don't remember 25

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1 WATERHOUSE - 10-19-21
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- 2 specifically but, yes, generally we -- you
- 3 know, we did do that.
- 4 Q. So do you recall -- and we can pull
- 5 it up, if need be -- that under the NexPoint
- 6 note that Mr. Morris asked you about earlier,
- 7 the one for more than \$30 million, that
- 8 NexPoint was obligated to make an annual
- 9 payment of principal and interest?
- 10 MR. MORRIS: Objection to the form
- of the question.
- 12 A. Yes, it was -- yes, it -- it was an
- 13 amortizing note. It was -- you know, from what
- 14 we reviewed earlier, it was payable by
- 15 December 31st of each year. So -- but are --
- 16 are you asking me --
- 17 Q. I'm just asking you, sir, if you
- 18 recall the note.
- 19 A. Yes, the \$30 million note, yes, we
- 20 reviewed it earlier, yes.
- Q. And do you recall Mr. Morris had you
- 22 go through the fact that NexPoint had made
- payments in years prior to 2020 on that note?
- 24 A. I do.
- Q. And do you believe that employees of

Page 335 WATERHOUSE - 10-19-21 1 the debtor would have played any role in NexPoint having made those prior payments? 3 MR. MORRIS: Objection to the form 4 of the question. 5 6 Α. Yes. 7 And what role in years prior to 2020 Ο. would employees of the debtor have had with 8 9 respect to NexPoint making that annual payment? 10 We -- we -- we would have -- I keep Α. saying "we." The team would have calculated 11 any amounts due under that loan and other 12 loans, as -- as standard course. 13 14 We would -- since we provided 15 treasury services to the advisors, we would inform the -- the -- we informed 16 Mr. Dondero of any cash obligations that are 17 forthcoming, whether we do cash projections. 18 If, you know, any of these payments 19 would have -- or, you know, the sum total of 20 all of these payments, including any note 21 22 payments, if there were any cash shortfalls, we would have informed Mr. Dondero of any cash 23 24 shortfalls. We could adequately plan, you know, in instances like that. 25

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Page 336
                  WATERHOUSE - 10-19-21
 1
 2.
                Or, sorry, we -- I say "we" -- I
     keep saying "we" -- I keep wearing my -- again,
 3
     my -- my treasurer hat.
 4
 5
                But, yes, it is to -- it is to
 6
     inform Mr. Dondero of the obligations of the
 7
     advisors in terms of cash and obligations that
     are -- are upcoming and that -- and that are --
 8
     are scheduled to be paid.
 9
                And would those obligations that are
10
     upcoming and scheduled to be paid prior to 2020
11
     have incurred the annual payment on that
12
13
     NexPoint $30 million note?
14
                MS. DANDENEAU: Objection to form.
15
                MS. DEITSCH-PEREZ: Davor, I think
          you misspoke. You might want to just
16
          repeat the question.
17
18
          Q.
                Okay. Let me repeat the question,
     sir.
19
20
                Prior to 2020, those services that
     you just described, would that -- on behalf of
21
22
     the debtor, would that have included NexPoint's
     payments on the $30 million note?
23
24
          Α.
                Yes.
25
                So someone at the debtor in treasury
          Q.
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WATERHOUSE - 10-19-21
 1
     or accounting would have sent some schedule or
     a reminder that a payment would be coming due
 3
                     Is that generally the practice?
 4
     in the future.
                Yes, we would -- you know, again, I
 5
 6
     didn't -- I didn't micromanage the teams, but
 7
     we had a -- a corporate accounting calendar
     that we use as kind of a tickler file to keep
     track of payments.
 9
10
                I actually, you know, don't know how
     actively they're using that in -- in prior to
11
     2020, but it was actively used at some point.
12
13
                We did look at NexPoint cash
14
     periodically and cash for the other advisors as
15
     well and payments. You know, we -- payments
16
     like this would have appeared in our cash
     projections, in the advisor's cash projections.
17
                And, again, as like I said earlier,
18
     they would have appeared there, so there would
19
20
     be time to plan for making any of these
21
     payments.
22
                And based on your experience, would
     it have been reasonable for NexPoint to rely on
23
24
     the debtors' employees to inform NexPoint of an
     upcoming payment due on the $30 million
25
```

Page 338 WATERHOUSE - 10-19-21 1 promissory note? 3 MR. MORRIS: Objection to form of the question. 4 MS. DANDENEAU: Objection to form. 5 Yes. Yes, they did. I mean, but I 6 Α. 7 mean, but I don't think these -- these notes were any secret to anybody. 8 9 I understand, and I'm not suggesting Q. otherwise. 10 MR. RUKAVINA: Please pull up Alpha 11 2, Mr. Nguyen. 12 13 (Exhibit A2 marked.) 14 Q. Now, this document is similar to the ones we've seen before as of December 31, 2020, 15 16 and I don't see under NTA anything there for paying the promissory note to Highland. 17 Do you see anything like that? 18 19 Α. I do not. 20 MR. RUKAVINA: You can pull that -that exhibit down, Mr. Nguyen. 21 22 You are aware, of course, by now Ο. that, in fact, NexPoint failed to make the 23 24 payment due December 31, 2020, are you not? 25 I am aware, and yes, I do understand Α.

Page 339 WATERHOUSE - 10-19-21 1 it. 2. Were you aware that Highland 3 Ο. accelerated that \$30 million promissory note? 4 5 Α. I am aware. 6 Ο. Were you aware of that acceleration 7 at the time that it occurred? I don't remember specifically. 8 Α. Do you recall whether anyone asked 9 Q. you -- prior to the acceleration, anyone asked 10 you at Highland, what Highland should do with 11 respect to the missed payment? 12 13 Α. Did anyone ask me what Highland 14 should do about the missed payment? 15 Q. Yes, before acceleration. 16 MR. MORRIS: Objection to the form of the question. 17 I mean, what -- what I recall is 18 Α. 19 there was the -- sorry, are you asking me --20 MS. DANDENEAU: Why don't you just repeat the question, Mr. Rukavina. 21 22 Let me try again, Mr. Waterhouse, Ο. 23 let me try again. 24 I am saying you're the CFO of someone, in this case, Highland, and the 25

Case 3:21-cv-00881-X Docume Exhibits 149 Piteme 038990/2446 Page 108 of 192 Page ID 54830 Page 340 WATERHOUSE - 10-19-21 1 2. borrower failed to make the required payment. Are you with me so far? 3 Α. I am. 4 Did anyone then ask you, what should 5 Ο. we do with respect to our rights against the 6 7 borrower that missed the payment? Not that I recall. Α. 8 Did you play a role in the decision 9 Q. to accelerate that \$30 million promissory note? 10 Α. I did not. 11 Do you recall whether Mr. Seery ever 12 Q. 13 asked you before the acceleration as to whether 14 he should accelerate the note? 15 Α. I don't recall. And you don't recall when you 16 Ο. learned of the acceleration itself? 17 MR. MORRIS: Objection to the form 18 19 of that question. It was -- it was sometime in 20 Α. early -- in early 2021. I don't remember 21 specifically. 22 But do you recall whether it was 23 Ο.

24

after the acceleration had already been

```
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                   WATERHOUSE - 10-19-21
 1
                 MS. DANDENEAU: Objection to the
          form of the question.
 3
          Α.
                 I don't recall.
 4
 5
                 Do you recall in early to mid
          Ο.
     January of 2021, after the default, discussing
 6
 7
     the default with Mr. Dondero?
          Α.
                 I do recall discussing with
 8
     Mr. Dondero after December 31, 2020?
 9
10
                 Yes, the fact of the default.
          Ο.
                 I don't recall.
11
          Α.
12
                MR. RUKAVINA: Let's pull up my
13
     Exhibit 6, Alpha 6.
                 (Exhibit A6 marked.)
14
15
                 MR. RUKAVINA: And, Mr. Nguyen, if
          you will please scroll down.
16
                 This email chain begins with you
17
          Ο.
     writing to Ms. Hendrix on January the 12th:
18
     NexPoint note to HCMLP.
19
20
                 Do you see that, sir?
21
          Α.
                 I do.
22
                 Were you discussing this same
          0.
     $30 million note we're talking about right now
23
24
     with Ms. Hendrix?
25
          Α.
                 Yes.
```

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1 WATERHOUSE - 10-19-21
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- Q. Okay. Do you recall what prompted
- 3 you to send that email to her?
- 4 A. Yes, I had -- I had a conversation
- 5 with Jim.
- 6 Q. Okay. And what -- what did you
- 7 discuss with Jim that led to this email chain?
- 8 A. He -- he called me and he said he
- 9 wanted to make payment on the NexPoint note,
- 10 and I didn't -- I didn't know the -- the amount
- 11 offhand, so I reached out to Kristin and got
- 12 the details and relayed that to him.
- Q. And you see you sent that email to
- 14 her at 11:15 a.m. Does that help you remember
- when you had this discussion with Mr. Dondero?
- 16 In other words, was it that morning or the day
- 17 before, or can you -- can you --
- 18 A. No, it was -- it was that morning.
- 19 Q. And do you recall how you had that
- 20 conversation with him?
- 21 MR. MORRIS: Objection to the form
- of the question.
- Q. By telephone, by email, in-person?
- 24 A. Yeah, he -- he called me. I was at
- 25 home. We were working from home here in

1 WATERHOUSE - 10-19-21

- 2 December of 2020. He called me from home. He
- 3 said he was in court. He wanted to -- he asked
- 4 about, you know, making payment on the note and
- 5 the amount, and so I didn't have those numbers
- 6 in front of me, so I said I would get back to
- 7 him. I wanted all the details, so here is
- 8 this -- so I reached out to Kristin.
- 9 Q. And then she gave you that
- 10 \$1,406,000 figure?
- MR. RUKAVINA: Mr. Nguyen, if you
- 12 will scroll up, please.
- 13 A. Yes. Yeah, she -- the \$1,406,112.
- Q. And do you recall whether you
- 15 conveyed that amount to Mr. Dondero?
- 16 A. Yes. I -- I called him back and
- 17 gave him -- gave him this amount.
- 18 Q. Are you aware of whether NexPoint,
- 19 in fact, then made that 1 million 406 and
- 20 change payment?
- 21 A. Yes, they did.
- Q. Did you discuss with Mr. Dondero at
- 23 that time, either the first conference or the
- 24 second conference that day -- strike that.
- When you conveyed the number to

Page 344 WATERHOUSE - 10-19-21 1 Mr. Dondero, was -- was it also on January 12th? 3 Sorry, when I conveyed the 4 Α. \$1.4 million number? 5 6 0. Yes. 7 Yes, yes, it was that -- it was --Α. So you had --8 Ο. 9 It was that point. Α. Well, to the best of your 10 0. recollection, you had a conference with 11 Mr. Dondero by the telephone in the morning, 12 13 and then another conference with him by 14 telephone after 11:40 a.m. that morning? 15 Α. Yeah, I can't remember -- yeah, it was either that morning or it could have been, 16 you know, early afternoon, but again, I 17 remember calling him back, relaying this 18 19 information to him, and he said, okay, pay --20 you know, make -- make this payment. And during either of those two 21 Ο. 22 calls, did you tell Mr. Dondero anything to the effect that making those -- I'm sorry, making 23 24 that payment would not de-accelerate the 25 promissory note?

```
Page 345
                   WATERHOUSE - 10-19-21
 1
          Α.
                 No.
                Did you tell him anything to the
 3
          Ο.
     effect that making that payment would not cure
 4
     the default?
 5
 6
          Α.
                No.
 7
                Did you discuss that in any way with
          Q.
     him?
 8
 9
          Α.
                No, I did not.
                Did he say why he wanted to have
10
          Ο.
     that $1.4 million payment made?
11
12
                MR. MORRIS: Objection to the form
          of the question.
13
14
          Α.
                He -- he -- he didn't go into
15
     specifics.
                Did he say anything to you to the
16
     effect that if NexPoint makes that payment,
17
     then the note will be de-accelerated?
18
19
                 MR. MORRIS: Objection to the form
20
          of the question.
                 I don't recall.
21
          Α.
22
                MR. RUKAVINA: You can put this one
23
          down, Mr. Nguyen.
24
                And, again, when you say you don't
          Ο.
     recall, you mean you don't remember right now
25
```

Page 346 WATERHOUSE - 10-19-21 1 either way; correct? Α. Yeah, I don't remember. I don't 3 remember us discussing that. 4 Now -- and we're almost done, I 5 0. 6 promise. I'm just going to -- I don't know how 7 to ask this question, so I'm just going to try to do my best. 8 9 Prior to the default on December 31, 2020, did Mr. Seery ever tell you any words to 10 the effect that you or someone at Highland 11 should ensure that NexPoint doesn't make its 12 13 payment? 14 Α. No. 15 0. Did you have any hint or any belief that anyone at NexPoint -- I'm sorry, strike 16 17 that. Did you have any reason to believe 18 19 that anyone with Highland was actively trying 20 to get NexPoint to make that default by not paying on December 31? 21 22 MR. MORRIS: Objection to the form 23 of the question. 24 Are you asking, did any Highland Α. employees actively work to make -- to 25

Page 347 1 WATERHOUSE - 10-19-21 somehow --Let me take a step back. 3 Ο. Yes. Let me take a step back. 4 5 So you are aware now that as a 6 result of that default, what was still some 7 25-year note was accelerated and became immediately due. You are aware of that now; 8 9 right? 10 Α. Yes. And can you see how someone at 11 Ο. Highland might actually have been pleased with 12 13 that development? MR. MORRIS: Objection to the form. 14 15 0. Not that they were --- not that they 16 were pleased, but you can see how someone at Highland might have been pleased with that 17 development? 18 MR. MORRIS: Objection to the form 19 20 of the question. MS. DANDENEAU: Object to form. 21 22 I don't know how they would have Α. reacted to that. 23 24 Okay. But you're not -- you're not Ο. aware of any instructions or any actions being 25

Page 348 WATERHOUSE - 10-19-21 1 given or taken at Highland by Mr. Seery, the independent board, DSI, that -- that would have 3 basically led Highland to ensure that NexPoint 4 would fail to make that payment? 5 6 Α. I'm not aware. 7 In other words, there wasn't a trick Q. or a settlement; right? 8 9 MS. DEITSCH-PEREZ: Objection to 10 form. MS. DANDENEAU: Object to form. 11 MR. MORRIS: Object to form. 12 13 Α. I'm not aware. 14 Look, I'm not aware. I'm not in 15 every conversation. I mean, and I'm just --16 again, I'm sitting at home. It is the end of the year. 17 Again, I'm not aware. That is a perfectly legitimate 18 Ο. I don't know why -- why you think 19 20 otherwise. Okay. Just give me one second to 21 22 compose my thoughts. 23 MS. DEITSCH-PEREZ: While you're 24 taking your one second, why don't we take three minutes. I will be right back. 25

```
Page 349
                  WATERHOUSE - 10-19-21
 1
                VIDEOGRAPHER: Do we want to go off
          the record?
 3
                MR. RUKAVINA:
 4
                              Yes.
                VIDEOGRAPHER: All right. We're
 5
 6
          going off the record at 6:27 p.m.
 7
          (Recess taken 6:27 p.m. to 6:30 p.m.)
                VIDEOGRAPHER: We are back on the
 8
 9
          record at 6:30 p.m.
                MR. HORN: Is Deb back?
10
                MS. DANDENEAU: Are you asking about
11
               I'm here.
12
          me?
13
                MR. HORN: Oh, okay. I don't see
14
          you, sorry.
15
                Actually, yeah, Mr. Waterhouse, so
          Q.
16
     when you had --
                MS. DANDENEAU: Are you asking about
17
          Deb Dandeneau or Deborah? I mean, there
18
19
          are a lot -- as we talked about, a lot of
                 I'm here.
20
          Debs.
21
                MS. DEITSCH-PEREZ: I'm here.
22
                MR. HORN: Yes, I was asking about
23
          DDP.
24
                MS. DEITSCH-PEREZ: Oh, DDP is here.
25
                MR. HORN: Okay. Here we go.
```

```
Page 350
                  WATERHOUSE - 10-19-21
 1
          going back on mute.
                MS. DANDENEAU: Get the right
 3
          nomenclature.
 4
                Mr. Waterhouse, on January 12th,
 5
          Ο.
 6
     2021, when you had those talks with Mr. Dondero
 7
     about the $1.4 million payment, did you have a
     communication or a conversation with Mr. Seery
 8
 9
     about that payment after January 12th, 2021?
10
          Α.
                I don't recall.
                Well, in response to Mr. Dondero
11
          Ο.
     reaching out to you, do you recall on that day,
12
13
     January 12th, talking to Mr. Seery or anyone at
14
     Highland other than the email chain we just saw
15
     about Mr. Dondero's call with you?
16
          Α.
                Did I talk to -- I spoke with
     Kristin -- I don't know if I spoke to her.
17
     likely spoke to Kristin Hendrix because we had
18
19
     to get the wire on NexPoint's behalf to make
20
     the payment to Highland.
                So it is true, then, that -- that
21
          Ο.
22
     employees of the debtor did actually cause that
     payment to be made when it was made after
23
24
     January 12th?
25
          Α.
                Yes, I mean, we -- we -- as I
```

Page 351 WATERHOUSE - 10-19-21 1 testified earlier, we provided that accounting 2. finance treasury function as -- under the 3 shared services agreement. And so once I 4 got the -- I talked to Jim, got the approval to 5 6 make this payment, we have to then make the payment, or the team does, and so the payment 7 was made. 8 Q. Okay. But -- okay. And -- and 9 sitting here right now, after Jim called you, 10 you don't remember talking to anyone other than 11 the -- the couple of people you mentioned, 12 13 talking to anyone about something to the effect 14 that, hey, Jim wants to make this payment now? 15 MR. MORRIS: Objection to the form of the question. 16 I don't -- I don't recall. 17 Α. And does that include legal counsel? 18 Q. 19 Without going into any detail, on January 12th or before that payment was made, 20 did you consult with legal counsel about 21 anything having to do with the \$1.4 million 22 23 payment? 24 Α. I don't recall. 25 Okay. Thank you, sir, for your Q.

```
Page 352
 1
                  WATERHOUSE - 10-19-21
 2.
     time.
 3
                MR. RUKAVINA: Pass the witness.
                MR. MORRIS: I just have a few
 4
 5
          questions, if I may.
 6
                MS. DEITSCH-PEREZ: Don't you go at
 7
          the end?
                MR. MORRIS: Oh, I apologize. He is
 8
 9
          your witness. I'm surprised you want to
10
          ask him questions, but go right ahead.
                MS. DEITSCH-PEREZ: Just have a
11
          couple of things.
12
13
                MR. RUKAVINA: And I will just
14
          object to that, that he's our witness.
15
          That's not --
16
                MR. MORRIS: I'm not talking to you.
17
          I'm not talking to you.
                MS. DANDENEAU: Also, Mr. Morris, it
18
          is -- it is --
19
20
                MS. DEITSCH-PEREZ: He is not my
          witness. He's been subpoenaed by you.
21
22
          Okay?
23
                That is no offense, Mr. Waterhouse,
24
          I'm -- I'm not -- okay. Anyway.
25
                        EXAMINATION
```

Page 353 WATERHOUSE - 10-19-21 1 BY MS. DEITSCH-PEREZ: Good evening. I'm very sorry to be 3 Ο. going last and I know you have had a long and 4 taxing day, so I thank you for indulging me. 5 The kinds of services that you 6 7 describe that the -- that Highland provided for NexPoint, did Highland also provide similar 8 9 services to that to HCRE and HCMS? 10 Α. Yes. MR. MORRIS: Objection to the form 11 of the question. 12 13 Ο. What kind of services did Highland 14 provide to HCRE and HCMS? MR. MORRIS: Objection to the form 15 of the question. 16 MS. DEITSCH-PEREZ: What is your 17 18 objection, John? 19 MR. MORRIS: It is vaque and 20 ambiguous. Unlike the advisors and NexPoint, they actually had shared services 21 22 agreements. 23 MS. DEITSCH-PEREZ: I got -- I 24 understand your objection. That is fine. Let's take them one at a time. 25 Q.

Page 354 WATERHOUSE - 10-19-21 1 What kinds of services did Highland 2. provide to HCRE? 3 MR. MORRIS: Objection to the form 4 5 of the question. 6 Α. HCMS, Highland employees provided 7 accounting services, treasury management services, potentially legal services. 8 don't -- but I wouldn't have been directly 9 involved in that. But as far as the teams that 10 I manage, it was accounting, treasury, things 11 of that nature. 12 13 Ο. Okay. And that was for HCM, LLP --14 Α. And -- and, sorry, it would also be 15 any asset valuation if needed as well. Okay. We went back and forth on 16 Ο. each other and I apologize, so just to clarify. 17 You were talking about the services 18 that Highland Capital Management provided to 19 20 HCMS; is that right? HCMS. So, again, yes. 21 Α. And accounting, treasury, valuation, and also tax 22 services too. 23 24 Ο. Okay. 25 Tax services. Look, I'm expanding Α.

```
Page 355
                   WATERHOUSE - 10-19-21
 1
     this, their HR services as well.
          Ο.
                Okay. And did that include bill
 3
     paying?
 4
 5
                MR. MORRIS: Objection to the form
 6
          of the question.
 7
                Did the services that HCM provided
     to HCMS include bill paying?
 8
                MR. MORRIS: Objection to the form
 9
          of the question.
10
          Α.
                 Yes.
11
                And did the services that HCMLP
12
          Ο.
13
     provided to HCMS include scheduling upcoming
14
     bills?
15
                MR. MORRIS: Objection to the form
          of the question.
16
17
          Α.
                 Yes.
                And did HCMLP regularly pay -- cause
18
          Q.
     to be paid the payments on loans HCMS had from
19
20
     HCMLP?
                MR. MORRIS: Objection to the form
21
          of the question.
22
          Α.
23
                Yes.
                 Typically -- if there is a
24
          Ο.
     typically, how far in advance of due dates did
25
```

Page 356 WATERHOUSE - 10-19-21 1 2. HCMLP cause HCMS to pay its bills? MR. MORRIS: Objection to the form 3 of the question. 4 5 I mean, it -- it -- it depend -- it Α. 6 depended on the nature of the payment and the 7 vendor, but, you know, if there were -- if there were larger scheduled payments, you know, 8 I would like to give at least 30 days notice. 9 And that is -- that is kind of my 10 rule of thumb so no one is surprised. 11 Okay. And was it generally HCMLP's 12 Q. 13 practice to timely pay HCMS' bills? 14 MR. MORRIS: Objection to the form 15 of the question. It -- it -- it -- that depended on 16 Α. the nature of the payment. 17 Okay. And can you explain what you 18 Ο. mean by that? 19 20 Α. Yeah, I mean if -- if it was -- I mean -- if there was some professional fees 21 22 that weren't -- you know, they were due but they weren't urgent, those fees may not be paid 23 24 as timely as others that have a due date or -or things like that. 25

Page 357 WATERHOUSE - 10-19-21 1 Ο. Okay. Are loan payments the kinds of thing that HCMLP would pay on time because 3 of potential consequences of not paying on 4 time? 5 6 MR. MORRIS: Objection to the form 7 of the question. Yes. As I testified earlier, we 8 Α. would want to give, you know, notice on -- on 9 -- on larger payments and -- and things of that 10 nature so we didn't miss due dates. 11 Okay. And over the course of time, 12 Q. did HCMLP generally pay HCMS' loan payments in 13 14 a timely fashion? MR. MORRIS: Objection to the form 15 of the question. 16 I can't remember specifically, but 17 Α. 18 generally, yes. Okay. Now, did HCMLP provide 19 Ο. 20 similar services to HCRE that you have described it provided to HCMS? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 Yes, but I don't think it -- it Α. provided -- I don't think it provided HR 25

Page 358 WATERHOUSE - 10-19-21 1 services. Can you describe the accounting and 3 Ο. treasury services that HCMLP provided for HCRE? 4 Yeah, it -- it would provide 5 Α. 6 bookkeeping services on a -- on a periodic 7 It would make payments, you know, as basis. needed. 8 Okay. So did it provide --9 Q. And -- and I believe it -- it -- it 10 Α. provided tax services as well. 11 Okay. And so did it provide the 12 Q. 13 same kind of bill -- did HCMLP provide the same 14 kind of bill-paying services for HCRE that it 15 provided for HCMS and NexPoint? 16 MR. MORRIS: Objection to the form of the question. 17 18 Α. Yes. 19 And over the course of time, did 0. 20 HCMLP generally cause to be made the loan payments that HCRE owed to HCMLP? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 Α. Yes. Did HCMLP make loan payment -- the 25 Q.

- 1 WATERHOUSE 10-19-21
- 2 loan payment that was due from HCMS to HCMLP in
- 3 December of 2020?
- 4 MR. MORRIS: Objection to the form
- 5 of the question.
- 6 A. I don't believe that payment --
- 7 payment was made.
- 8 Q. Okay. And when HCMLP caused HCMS in
- 9 the past to make loan payments, whose money did
- 10 it use to make those payments?
- 11 MR. MORRIS: Objection to the form
- of the question.
- 13 A. It was the -- the money in HCMS's
- 14 operating account would be made to that --
- 15 those moneys would be used to make payment to
- 16 Highland Capital Management.
- 17 Q. Okay. And Highland -- is it correct
- 18 that Highland Capital Management personnel had
- 19 the access to HCMS's accounts to be able to
- 20 cause such payments to be made?
- 21 A. Yes, Highland personnel had access
- 22 to those accounts.
- Q. Okay. And so now for HCRE, whose
- 24 money was used when HCMLP caused HCRE
- 25 payments -- loan payments to Highland to be

Page 360 WATERHOUSE - 10-19-21 1 2. made? MR. MORRIS: Objection to the form 3 of the question. 4 It was -- it was cash in HCRE's bank 5 Α. 6 account that would be used to make payments to 7 Highland Capital Management. Okay. And so did Highland Capital 8 Ο. Management have access to HCRE's funds in order 9 to be able to make such payments? 10 MR. MORRIS: Objection to the form 11 of the question. 12 13 Α. Personnel at Highland Capital 14 Management had access to HCRE's bank account to 15 effectuate the payments. Okay. And was the payment due from 16 Ο. HCRE to HCMLP due in December of 2020 made? 17 18 Α. It --19 In December of 2020. Ο. 20 Α. It was not. Okay. And was there money in HCRE's 21 Q. account that would have enabled the payment to 22 be made had HCM personnel attempted to make the 23 24 payment? 25 MR. MORRIS: Objection to the form

Page 361 WATERHOUSE - 10-19-21 1 of the question. Α. I -- I don't recall. 3 Do you have any reason to believe 4 Ο. that either HCRE or HCMS simply didn't have the 5 6 funds on hand to make the December 2020 7 payments? Α. I don't know. 8 I quess I'm asking, do you have any 9 Q. reason to believe that they didn't have the 10 funds? 11 We managed cash for so many 12 Α. 13 different entities and funds, and I don't 14 recall, you know, where the cash position was 15 for HCRE and HCMS at 12/31/2020. 16 Ο. Okay. I just don't recall, and I don't --17 Α. and I don't remember what the loan payment 18 19 obligations were from HCRE to Highland, and 20 from HCMS to Highland. I don't recall. don't recall, I mean... 21 22 Let me come at it a different way. Ο. Were the -- were the payments that would 23 24 otherwise have been due in December of 2020 made in January of 2021 for HCMS and HCRE? 25

- 1 WATERHOUSE 10-19-21
- 2 A. I believe the HCRE payment was made
- 3 in January of 2021. I don't recall any
- 4 payments being made from HCMS to Highland.
- 5 Q. If it -- how is it the HCRE payment
- 6 came to be made? Why did you make it -- why
- 7 did HCM make the payment in January of 2021?
- 8 A. Jim -- Jim called me and instructed
- 9 me to -- to make the payment on behalf of HCRE,
- 10 Jim Dondero -- Jim Dondero.
- 11 Q. Did he seem upset that -- that the
- 12 payment had not been made?
- 13 A. Yeah. On the note that was, you
- 14 know, that was the term note, yes, he -- he was
- 15 displeased that the -- that the payment had not
- 16 been made by year-end.
- 17 Q. Okay. And did you make the -- cause
- 18 the payment to be made as -- as requested?
- 19 A. Yes.
- 20 Q. And did anyone else from HCM
- 21 participate with you in causing the payment to
- 22 be made to -- on the HCRE loan?
- 23 A. Yes. It would have been Kristin
- 24 Hendrix. I -- again, I don't -- as I testified
- 25 earlier, I'm not an officer of HCRE. I don't

- 1 WATERHOUSE 10-19-21
- 2 believe I'm an authorized signer. So I
- 3 can't -- other personnel have to make payment
- 4 from HCRE to -- to -- to Highland.
- 5 Q. Okay. And in the conversation
- 6 that -- that you had with Mr. Dondero when he
- 7 requested the payment to be made, did you say
- 8 to him words to the effect, Jim, this loan is
- 9 going to stay in default, what are you making
- 10 the payment for, anything like that?
- 11 A. No.
- 12 Q. In fact, did you have the impression
- 13 from him that he thought that the loan would
- 14 be -- the default would be cured by making the
- 15 payment?
- MR. MORRIS: Objection to the form
- of the question.
- 18 A. Did I get the impression from Jim
- 19 Dondero that the loan would be cured if the
- 20 payment from HCRE --
- 21 Q. Yeah, if that is what he thought.
- MR. MORRIS: Objection to the form
- of the question.
- 24 A. I didn't get any impression from him
- 25 on that at the time.

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WATERHOUSE - 10-19-21

- Q. Do you know whether there was an
- 3 HCMS term loan that had a payment due in
- 4 December of 2020?

1

- 5 A. I don't recall.
- 6 Q. Okay. And so the reason you don't
- 7 recall whether or not there was a payment in
- 8 January of 2021 is because you just don't
- 9 remember whether there was such a loan at all?
- 10 MR. MORRIS: Objection to the form
- of the question.
- 12 A. I don't remember. There is -- there
- is so many notes, and I mean, demands, and I
- 14 don't -- I don't remember. It's a lot to keep
- 15 track in your head.
- 16 Q. I understand, and -- and I hear your
- 17 frustration when you have explained that the
- 18 debtor has your documents and you don't, and so
- 19 I fully appreciate it, and this is no knock on
- 20 you. It's a knock on somebody else on this
- 21 call.
- MR. MORRIS: I move to strike. That
- was pretty obnoxious, but go ahead.
- Q. Okay. But so, Mr. Waterhouse, if --
- if a payment on the HCMS loan was made in

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1 WATERHOUSE - 10-19-21
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- 2 January of 2021, do you think it was part of
- 3 the same conversation where Jim Dondero said,
- 4 hey, why didn't that get paid, please make
- 5 that -- get that payment done?
- 6 MR. MORRIS: I object to the form of
- 7 the question.
- 8 A. Yes. Likely it would have been -- I
- 9 mean, again, I don't recall a payment being
- 10 made, but, you know, again, I don't remember
- 11 everything.
- 12 Q. Okay. Did -- at the time you were
- 13 communicating with Kristin Hendrix about the
- 14 payment being made, whichever payments were
- 15 made in January, did she say anything to you
- 16 about the payments not curing the loan
- 17 defaults?
- 18 A. No.
- 19 Q. Okay. All right. So I'm going to
- 20 take you back to very early in the deposition
- 21 when Mr. Morris was asking you about the --
- 22 the -- the -- the agreement with respect to
- 23 the -- the forgiveness element of the loans, so
- 24 that is just to orient you.
- Do you remember that there was a

Page 366 WATERHOUSE - 10-19-21 1 time that you and Mr. Dondero were 2. communicating about potential means of 3 resolving the Highland bankruptcy by what was 4 colloquially referred to as a pot plan? 5 6 Α. Yes. 7 Okay. And can you tell me generally Q. when that was? 8 Like mid -- mid 2020, sometime in 9 Α. 2020, mid 2020. 10 Okay. And did the process of trying 11 to figure out what the numbers should be 12 13 involve looking at what one should pay for the Highland assets? 14 15 MR. MORRIS: Objection to the form of the question. 16 Yes. 17 Α. Okay. And did there come a time 18 Ο. 19 when you were proposing some potential numbers 20 and Mr. Dondero said something to you like, well, why are you including payment for the 21 22 related party notes, those, you know, were likely to be forgiven as part of my deferred 23 24 executive compensation? 25 MR. MORRIS: Objection to the form

Page 367 WATERHOUSE - 10-19-21 1 of the question. Α. Yes, we did have that conversation. 3 Okay. Was that conversation in 4 Ο. connection with trying to figure out the right 5 6 numbers for a pot plan? 7 I mean, it was -- it was -- I Α. Yeah. mean, Jim -- Jim would ask for, you know, 8 9 most -- most recent asset values, you know, for Highland, and -- and myself and the team 10 provided those to him, so it was in that 11 12 context. 13 Ο. Okay. And does that refresh your 14 recollection that these communications were in 15 2020 rather than 2021? 16 MR. MORRIS: Objection to the form of the question. 17 The -- the -- the executive 18 Α. compensation discussions were definitely in 19 2020. 20 Okay. Now, did you ever make 21 Ο. proposals that took into account Jim's comment 22 that the notes were likely to end up forgiven 23 24 as part of his compensation? 25 MR. MORRIS: Objection to the form

Page 368 WATERHOUSE - 10-19-21 1 of the question. Yes, we -- the team and myself put 3 Α. together, you know, asset summaries of Highland 4 at various times for all the assets of 5 6 Highland, and not including the notes. 7 Okay. And were those presentations communicated to -- to Mr. Seery? 8 Well, look, I didn't tell -- I 9 Α. No. didn't tell Mr. Seery. I don't know what 10 Mr. Dondero did with the information. 11 12 Q. Okay. 13 Α. I did not have conversations with 14 Mr. Seery. 15 0. Okay. Do you know who saw the presentations that you put together that didn't 16 include the value of the related party notes? 17 We're talking presentations -- these 18 Α. 19 are -- these are Excel spreadsheets? 20 Q. Uh-huh. I don't know who -- these were given 21 Α. to -- to Jim Dondero. I don't know what was 22 done with them after that. 23 24 Okay. You also mentioned earlier Ο. that sometime during your tenure at Highland 25

Page 369 WATERHOUSE - 10-19-21 1 you knew of the practice of giving forgivable loans to executives. 3 MR. MORRIS: Objection to the form 4 5 of the question. 6 Ο. Can you -- can you tell me what you 7 recall about that practice? MR. MORRIS: Objection to the form 8 of the question. 9 Yes, so there were -- there were --10 during my tenure at Highland, there were loans 11 or -- given to employees that were later 12 forgiven at a future date and time. 13 14 Ο. Okay. And when the loans were 15 given, did the notes, to your recollection, say anything about the potential forgiveness term? 16 MR. MORRIS: Objection to the form 17 18 of the question. 19 When you say "did the notes," did Α. 20 the promissory notes detail the forgiveness? 21 0. Yes. 22 Not that I recall. Α. And until such time as whatever was 23 Ο.

notes bona fide notes as far as you were

24

25

to trigger the forgiveness occurred, were the

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Page 370
                  WATERHOUSE - 10-19-21
 1
 2.
     concerned?
                MR. MORRIS: Objection to the form
 3
          of the question.
 4
 5
          Α.
                Yes, similar to -- yes.
 6
          Ο.
                Okay. You were going to say similar
 7
     to what?
                Mr. Morris earlier today showed
 8
          Α.
     notes of the financial statements about various
 9
     affiliate loans. I -- I -- I do recall these
10
     notes because I -- at that time personally
11
     worked on the -- the financial statements of
12
13
     Highland. That was, you know, in my role as a
14
     corporate accountant.
15
                And there were -- those loans
16
     were -- to the partners were detailed in the
     notes to the financial statements, similar to
17
     what we went through earlier today in the prior
18
19
     testimony about what we saw with Highland
20
     and -- and -- and the -- and HCMFA.
                Is it fair to say that on Highland's
21
          Ο.
22
     balance sheet there were any number of assets
     that the value of which could be affected by
23
24
     subsequent events?
25
                MR. MORRIS: Objection to the form
```

Page 371 WATERHOUSE - 10-19-21 1 of the question. Yes. I mean, yes, that -- there 3 Α. are. And that is -- yes. 4 Okay. And is it typical accounting 5 0. 6 practice that until there is some certainty 7 about those potential future events, that asset value listed on -- on the books doesn't take 8 into account those potential future events? 9 10 MR. MORRIS: Objection to the form of the question. 11 Yeah, if those -- yes. If -- if 12 Α. 13 those future events, you know, at the time of 14 issuance are not known or knowable, like I 15 discussed earlier with, like, market practice, asset dislocation, or, you know, I mean, things 16 like that, you -- I mean, it -- it could affect 17 its fair value --18 19 Ο. Okay. 20 Α. -- in the future. And am I correct you wouldn't feel 21 Ο. compelled to footnote in every possible change 22 in -- in an asset when those possibilities are 23 24 still remote? 25 MR. MORRIS: Objection to the form

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 1
          of the question.
                The accounting standard is you have
 3
          Α.
     to estimate to the best -- you know, to -- to
 4
     the best of your ability, the fair value of an
 5
 6
     asset as of the balance sheet date under --
 7
     under GAAP.
                Did -- strike that.
 8
          Ο.
                Okay. Give me a minute. I'm
 9
     close -- I'm close to done. Let me just go off
10
     and look at my notes for a second. So take two
11
     minutes.
12
                               We're going off the
13
                VIDEOGRAPHER:
14
          record at 7:02 p.m.
15
          (Recess taken 7:02 p.m. to 7:03 p.m.)
                VIDEOGRAPHER: We are back on the
16
          record at 7:03 p.m.
17
                Mr. Waterhouse, is it generally your
18
          Ο.
     understanding that people you work with now
19
20
     have been asking the debtor for full and
     unfetterred access to their own former files?
21
22
                MR. MORRIS: Objection to the form
          of the question.
23
24
                Yes, I am -- I am generally aware.
          Α.
25
                Okay. And do you think you could
          Q.
```

Page 373 WATERHOUSE - 10-19-21 1 have been better prepared for this deposition if the debtor had complied with those requests? 3 MR. MORRIS: Objection to the form 4 5 of the question. 6 Α. I -- I -- I most certainly -- yes. 7 I mean, again, these are multiple years, multiple years ago, lots and lots of 8 9 transactions. You know, we asked about NAV errors 10 and, you know, things like that and these 11 are -- it would make this process a lot more --12 13 a lot easier and if we had -- if we had access 14 to that. 15 0. And has the debtor -- is the Okay. debtor suing you right now? 16 17 Α. Yes. And is the debtor trying to renege 18 Q. on deals that it had previously made with you? 19 20 MR. MORRIS: Objection to the form of the question. 21 22 Sorry, I need to -- it is my Α. understanding that the litigation trust is 23 24 suing me. And not being a lawyer, I don't know -- is that the debtor? 25

Page 374 WATERHOUSE - 10-19-21 1 Is that -- I don't know the 2. relationship. So, again, I'm not the lawyers. 3 I've said many times. But my understanding is 4 the litigation trust is suing me. I could be 5 6 wrong there. I don't know. 7 Okay. I understand. Ο. Someone with some connection to the 8 Highland debtor has brought a claim against 9 you; is that fair? 10 MR. MORRIS: Objection to the form 11 of the question. 12 13 Α. Yes. 14 Okay. And is there also some motion Ο. 15 practice in the bankruptcy where the debtor or someone associated with the debtor is 16 attempting to undo something that was 17 previously resolved with you? 18 19 Α. Yes. 20 And so in one action somebody is Ο. associated with the debtors trying to --21 22 threatening you with trying to take money from you, and then in the other -- and trying to --23 and in the other they are threatening not to 24 pay you things that had previously been agreed; 25

```
Page 375
                  WATERHOUSE - 10-19-21
 1
     is that correct?
 2.
                MR. MORRIS: Objection to the form
 3
          of the question.
 4
 5
          Α.
                I want to be -- yes, I -- there
 6
     is -- I'm being sued, again, on -- on something
     that was agreed to with Mr. Seery and myself.
 7
     I don't -- I don't -- I don't own that claim.
 8
 9
          Q.
                Okay.
                To be transparent, I don't own that
10
          Α.
             So it is not my personal property.
11
12
          Q.
                Okay.
13
          Α.
                And -- and being the nonlawyer, I
14
     don't know how I can get sued for something
15
     that I don't owe or, like, I don't own
     anything. I'm not the lawyer. But, I mean, if
16
     that is -- if I'm understanding the facts
17
18
     correctly.
19
                Okay. And the lawsuit that was
          Ο.
20
     filed that names you, that was just filed
     this -- this past week; is that right?
21
22
                MS. DANDENEAU: Ms. Deitsch-Perez, I
23
          do want to interrupt at this point because
24
          just as I told Mr. Morris, that this is a
          deposition about the noticed litigation.
25
```

```
Page 376
                  WATERHOUSE - 10-19-21
 1
                I really don't want to go -- go
          afield --
 3
                MS. DEITSCH-PEREZ: Yeah.
 4
 5
                MS. DANDENEAU: -- and open up a
 6
          whole new line of inquiry about the lawsuit
 7
          or the -- the motion and the bankruptcy
          court. We will be here all night.
 8
 9
                MS. DEITSCH-PEREZ:
                                     And I
          understand.
10
                My -- my point is: Do you feel
11
          Ο.
     like -- like there is some effort by these
12
13
     parties related to the debtor to intimidate
14
     you -- not that you -- I'm not saying you are
15
     or you aren't.
                But do you feel like there is some
16
     effort to intimidate you and maybe an effort to
17
     deter you from being as prepared as you might
18
     be in this deposition?
19
20
                MR. MORRIS: Objection to the form
21
          of the question.
22
                I was -- I was surprised by the
          Α.
     lawsuit, by me being named, because, again, I
23
24
     don't own the asset and things like that.
25
     Yeah, I just -- I want to move forward with my
```

```
Page 377
                   WATERHOUSE - 10-19-21
 1
     life at Skyview.
                MS. DEITSCH-PEREZ:
                                      Thank you.
 3
                 THE WITNESS:
                               Thank you.
 4
 5
                    FURTHER EXAMINATION
 6
     BY MR. MORRIS:
                 If I may, I just have a few
 7
          Q.
     questions.
 8
 9
                Mr. Waterhouse, we saw a number of
     documents that Mr. Rukavina put up on the
10
     screen where Ms. Hendrix would send you a
11
     schedule of payments that were due on behalf of
12
13
     certain Highland affiliates.
14
                Do you remember that?
15
          Α.
                Yes.
                And in each instance she asked for
16
          Ο.
     your approval to make the payments; is that
17
     right?
18
                 Yes, she did.
19
          Α.
                And was that the -- was that the
20
          Ο.
     practice in the second half of 2020 whereby
21
     Ms. Hendrix would prepare a list of payments
22
     that were due on behalf of Highland associates
23
24
     and ask for approval?
25
          Α.
                 Yes.
```

Page 378 WATERHOUSE - 10-19-21 1 Ο. And I think you said that there was 3 a -- a --It was -- I think I testified to 4 Α. 5 this earlier when we talked about procedures 6 and policy, you know, again, I want to be 7 informed of -- of -- of -- of any payments that are going out. I want to be made 8 aware of these payments, and that was just a 9 general policy, not just for 2020. 10 Okay. So it went beyond 2020? 11 Q. 12 Α. Yes. 13 Q. Is that right? 14 Α. Yes. 15 Okay. And the corporate accounting Q. group would prepare a calendar that would set 16 forth all of the payments that were anticipated 17 in the -- in the three weeks ahead; is that 18 19 right? 20 Α. I -- like I testified earlier, we 21 had a corporate calendar that was set up, you 22 know, to -- to provide reminders or, you know, of anything of any nature, whether it is 23 24 payments or -- or financial statements or, you know, whatever it is, you know, to meet 25

Page 379 WATERHOUSE - 10-19-21 1 2. deadlines. I don't know how, as I testified 3 earlier, how much they were using that 4 calendar. 5 Okay. But -- but you did get notice 6 Ο. 7 and a request to approve the payments that were coming due on behalf of Highland's affiliates. 8 Do I have that right? 9 10 MS. DANDENEAU: Objection to form. I mean, generally, yes. I mean, you 11 Α. know, as we saw with these emails, generally, I 12 13 mean, did that encompass everything, no. 14 Okay. Do you know why the Ο. 15 payment -- do you know why there was no payment made by NexPoint at the end of 2020? 16 There was -- there was -- we 17 Α. 18 talked about these agreements between the 19 advisors and Highland, the shared services and 20 the cost reimbursement agreement. And in late 2020, there were 21 22 overpayments, large overpayments that had been made over the years on these agreements, and it 23 24 was my understanding that the advisors were -were talking with -- like Jim Seery and others 25

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- 1 WATERHOUSE 10-19-21
- 2 to offset any obligations that the advisors
- 3 owed to Highland as offset to the overpayments
- 4 on these agreements.
- 5 Q. Okay. Did you participate in any of
- 6 those conversations?
- 7 A. I did not.
- 8 Q. Okay. Do you know -- do you recall
- 9 that the -- at the end of November, the debtor
- 10 did notice to the advisors of their intent to
- 11 terminate the shared services agreements?
- 12 A. Like I testified earlier, there
- 13 was -- the agreements weren't identical, from
- 14 what I recall, and there is one that had a
- 15 longer notice period, which I think had a
- 16 60-day notice period. I don't recall which one
- 17 that was, so not all of them were -- notice
- 18 hadn't been given as of November 30th, for all
- 19 of the agreements.
- 20 Q. Upon the receipt of the -- the
- 21 termination notices that you recall, do you
- 22 know if the advisors decided at that point not
- 23 to make any further payments of any kind to
- 24 Highland?
- MR. RUKAVINA: Objection, form.

Page 381 WATERHOUSE - 10-19-21 1 The advisors -- the advisors Α. No. had stopped making payments prior to that 3 notice. 4 Okay. And how do you know that the 5 Ο. 6 advisors stopped making -- making payments 7 prior to the notice? I had -- I had a conversation 8 with -- with Jim Dondero. 9 And did Mr. Dondero tell you that 10 the advisors would no longer make payments to 11 Highland? 12 13 MS. DEITSCH-PEREZ: Object to the 14 form. 15 Α. Yes, he -- he -- again, he said they -- they -- the advisors have overpaid on 16 17 these agreements, to not make any future payments, and that there needs to be offsets, 18 19 and they're working on getting offsets to these 20 overpayment. Do you know if anybody ever 21 Ο. 22 instructed Highland's employees to make the payment that was due by NexPoint at the end of 23 24 the year? Did anyone instruct Highland's 25 Α.

Page 382 WATERHOUSE - 10-19-21 1 employees to make that payment? Correct. 3 Q. Anyone -- not that I'm aware. Α. 4 5 Were any of Highland's employees Ο. 6 authorized to make the payments on behalf of 7 its affiliates -- withdrawn. Was any of Highland's employees 8 authorized to effectuate the payment on behalf 9 of NexPoint that was due at the end of the year 10 without getting approval from either you or 11 Mr. Dondero? 12 13 Α. They had the -- they had the ability to make the payment, but they didn't -- you 14 15 know, that -- that payment needed to be 16 approved. Okay. And it needed to be approved 17 18 by you or Mr. Dondero; is that right? 19 I mean, I'm not going to make the Α. 20 unilateral decision. Is that a decision that you 21 Ο. 22 understood had to be made by Mr. Dondero? Yes. Sitting back in December of 23 Α. 24 2020, the -- that -- there was this off --25 offset negotiation that -- that was happening,

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1 WATERHOUSE - 10-19-21
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- 2 so I mean, until those negotiations were
- 3 resolved, you know, there wasn't any
- 4 payments -- there weren't any payments.
- 5 Q. And -- and there were no payments
- 6 until the negotiations were resolved because
- 7 that was the directive that you received from
- 8 Mr. Dondero; correct?
- 9 A. I don't think he said -- I mean, I
- 10 think -- yeah, I mean -- I'm trying to recall
- 11 the conversation. It was -- you know, there
- 12 is -- there is these negotiations. There's --
- there needs to be these offsets. They're
- 14 talking with the debtor. So, you know, until
- 15 this is resolved, right, I mean, depending on
- 16 how, whatever that resolution was, were we to
- 17 take any action.
- 18 Q. Okay. How about with respect to
- 19 HCMS, did HCMS have a term payment due at the
- 20 end of the year?
- 21 A. Again, I don't -- I don't recall.
- Q. Okay. You discussed briefly two
- 23 payments that were made in January of 2021, one
- on behalf of NexPoint, and one on behalf of
- 25 HCMS. Do I have that right?

Page 384 WATERHOUSE - 10-19-21 1 Α. The two payments I recall were NexPoint and HCRE. 3 Okay. And those two payments --4 5 thank you for the correction. And those two 6 payments were made because Mr. Dondero 7 authorized those payments to be made; correct? Α. 8 Yes. And they hadn't been made before 9 Q. that because Mr. Dondero had not authorized 10 them to be made? 11 12 MS. DEITSCH-PEREZ: Object to the 13 form. Yes, because of these negotiations. 14 Α. 15 Okay. Just a couple of more Q. 16 questions. Did anybody, to the best of your 17 knowledge, on behalf of HCMFA, ever tell the 18 19 SEC that HCMLP was responsible for the mistakes 20 that were made on the TerreStar valuation? Did anyone from Highland on HCMFA's 21 Α. 22 behalf tell the SEC that Highland -- that Highland was responsible for there -- I just 23 24 want to make sure --25 It was a little bit different, so Q.

Page 385 WATERHOUSE - 10-19-21 1 let me try again. Α. These are very long questions, John. 3 I'm not trying to be --4 That is good. Do you know whether 5 Ο. 6 anybody -- do you know whether anybody on 7 behalf of HCMS -- HCMFA ever told the SEC that Highland was the responsible party for the 8 TerreStar valuation error? 9 10 Α. Not that I'm aware. Okay. Did anybody on behalf of 11 Ο. the -- on behalf of HCMFA ever tell the retail 12 13 board that Highland was responsible for the 14 TerreStar valuation error? Not that I'm aware. 15 Α. Do you know if HCMFA made an 16 Ο. insurance claim with respect to the damages 17 that were incurred in relation to the TerreStar 18 valuation error? 19 20 Α. Yes. And do you know why they made that 21 Ο. insurance claim? 22 23 Α. Because there was an error. 24 mean --Was the insured's claim made -- was 25 Q.

Page 386 WATERHOUSE - 10-19-21 1 the insurance claim made under HCMFA's policy? Α. Yes. 3 Did HCMFA at any time prior to the 4 Ο. 5 petition date -- withdrawn. You were asked a couple of questions 6 7 where -- where you said that Mr. Dondero told you that he was ascribing zero value to the 8 notes as part of a pot plan because he believed 9 that the notes were part of executive 10 compensation. 11 Do I have that right? 12 13 MS. DEITSCH-PEREZ: Object to the form. 14 15 Α. Yes. Okay. Have you ever heard that 16 Ο. before the time that Mr. Dondero told you that 17 in the conversation about the pot plan? 18 19 Had I heard that prior to my Α. conversation with Mr. Dondero? 20 21 0. Yes. 22 No, I had not heard that prior. Α. Okay. And that was in the context 23 Ο. 24 of his formulation of the settlement proposal; is that right? 25

Page 387 WATERHOUSE - 10-19-21 1 Α. I mean, generally, yes. You know, we were asked to provide asset values, right, 3 and he was having settlement discussions. 4 Again, I don't know who those went to 5 6 ultimately. I don't recall. 7 MR. MORRIS: I have no further questions. Thank you very much for your 8 patience. I apologize for the late hour. 9 10 MS. DEITSCH-PEREZ: John, you stay on about your email when --11 MR. RUKAVINA: Hold on, I'm not 12 13 done. MS. DEITSCH-PEREZ: Oh, okay. Davor 14 15 still has questions. Sorry. I was going to say both John and Davor, could you stay 16 on afterwards just to talk about the 17 18 requests. FURTHER EXAMINATION 19 20 BY MR. RUKAVINA: Mr. Waterhouse, you were just now 21 Ο. testifying about a discussion you had with 22 Mr. Dondero where he said something like no 23 24 more payments. Do you remember that testimony? 25

```
Page 388
                  WATERHOUSE - 10-19-21
 1
          Α.
                Yes.
                       And was that late November or
 3
          Ο.
                Okav.
     early December of 2020?
 4
                It was, I would say, first or second
 5
          Α.
     week of November.
 6
 7
                Okay. Do you recall whether --
     whenever you had that discussion, whether
 8
 9
     Mr. Dondero had already been fired by the
10
     debtor?
                Yes, I -- I believe he was not an
11
          Α.
     employee of the debtor anymore at that time.
12
13
                And when you were discussing this
14
     with Mr. Dondero and he said no more payments,
     you were discussing the two shared services
15
     agreements and employee reimbursement
16
     agreements we testified -- you testified about
17
     before; is that correct?
18
                MR. MORRIS: Objection to the form
19
20
          of the question.
                That is correct.
21
          Α.
22
                And had your office or you -- and we
          Ο.
     will talk at a future deposition about the
23
24
     administrative claim.
25
                But had -- by that time that you
```

Page 389 WATERHOUSE - 10-19-21 1 talked to Mr. Dondero, had your office or you done any estimate of what the alleged 3 overpayments were? 4 5 MR. MORRIS: Objection to the form 6 of the question. 7 Yes, we had -- there was a -- there Α. was a detailed analysis that was put together 8 by David Klos at the time. 9 And do you recall just generally 10 what the total amount for both advisors of the 11 12 overpayments was? 13 Α. It was in excess of \$10 million. 14 Q. Was it in excess of \$14 million? 15 MR. MORRIS: Objection to the form of the question. 16 I -- I remember it was an 17 18 eight-figure number. I don't remember specifically. 19 20 Okay. And did you convey that number to Mr. Dondero when you had that 21 22 conversation? 23 Α. Yes. 24 Q. What was his reaction? 25 I mean, he wasn't happy. Α.

Page 390 WATERHOUSE - 10-19-21 1 Q. Is it fair to say he was upset? Α. Yes. 3 Did Mr. Dondero ever expressly tell 4 Ο. 5 you to not have NexPoint make the required 6 December 31, 2020, payment? 7 Yes, I recall him saying don't make the payment because it was being negotiated, as 8 I discussed with Mr. Morris, this offset 9 concept. So there were obligations due by the 10 advisors to Highland, they should be offset 11 that -- you know, those obligations should be 12 13 offset by this -- by this overpayment. And when did he tell you that? 14 Q. I would say -- I would say around --15 Α. probably December -- December-ish. 16 17 Early December, late December? Ο. I don't recall with as much 18 Α. 19 specificity as -- as -- as stopping the 20 shared services payments, because we had actually made one shared services payment in 21 22 November. So that is why I need to remember that one more clearly. I don't remember where 23 24 exactly in December that conversation occurred. 25 Q. Did Mr. Dondero expressly use the

Page 391 WATERHOUSE - 10-19-21 1 word "NexPoint" when he was saying don't make these payments? 3 MR. MORRIS: Objection to the form 4 5 of the question, asked and answered. 6 Α. Yeah, we were -- we were discussing 7 advisor obligations. So it was -- you know, it was just obligations from the advisors. 8 9 And -- and he specifically talked about the NexPoint payment as well. 10 Okay. And it is your testimony that 11 Ο. he expressly told you not to make that NexPoint 12 13 December 31 payment? MR. MORRIS: Objection, asked and 14 15 answered twice. Yes, he -- he did, during that 16 Α. conversation. 17 And did you ever follow up with him 18 Ο. after that about whether NexPoint should or 19 20 shouldn't make that payment? I did not. 21 Α. 22 Did you ever, on or about 0. December 31, 2020, remind him and say, hey, 23 24 this payment is due, what shall I -- what 25 should I do?

Page 392 WATERHOUSE - 10-19-21 1 I did not. Α. So sitting here today, you -- you 3 Ο. remember distinctly that Dondero in December of 4 2020 expressly told you not to have NexPoint 5 6 make that payment? 7 MR. MORRIS: Objection, asked and answered three times. 8 9 Α. Yes. Can you say categorically it wasn't 10 just some general discussion where he told you 11 not to make payments? 12 13 MR. MORRIS: Objection, asked and 14 answer four times. 15 MR. HORN: Four times now. Go for five. 16 17 Α. Yes. Did you tell Mr. Seery that? 18 Q. I don't believe I did. I don't 19 Α. 20 recall. And was this an in-person discussion 21 Ο. or telephone or email? Do you remember? 22 This was a phone -- a phone 23 Α. 24 conversation. Okay. Would you have a record of --25 Q.

Page 393 WATERHOUSE - 10-19-21 1 on your cell phone of when that conversation might have taken place? 3 I'm sorry, strike that. 4 Was that by cell phone? 5 6 Α. I believe -- yes, because we -- I 7 I mean, I don't have a landline. was at home. All I have is my cell phone. 8 9 Do you know whether your cell phone Q. still has records of conversations from 10 December 2020 on it? 11 My call log doesn't go back that 12 Α. 13 far. 14 Q. Okay. Thank you. 15 MR. RUKAVINA: I will pass the witness. 16 MS. DEITSCH-PEREZ: Just a couple 17 18 quick questions. 19 FURTHER EXAMINATION BY MS. DEITSCH-PEREZ: 20 With respect to HCRE and HCMS, am I 21 Ο. correct there was -- there was no direction not 22 23 to pay those loan payments? 24 MR. MORRIS: Objection to the form 25 of the question.

Page 394 WATERHOUSE - 10-19-21 1 Α. Yes, I don't recall having conversations about, you know, those -- those 3 entities. 4 5 And, in fact, what was the tone that Ο. 6 Mr. Dondero had when he talked to you about the fact that HCRE and HCMS payments hadn't been 7 made when he found out that they hadn't been 8 paid? 9 10 MS. DANDENEAU: Objection to form. MR. MORRIS: Objection to form. 11 What was the tone he took with you? 12 Q. 13 Α. Oh, it was -- it was -- it 14 was very negative. I mean, I think he cursed at me and he doesn't usually curse. 15 Okay. And in your mind, is that 16 Ο. consistent with the fact that he was surprised 17 18 that those payments hadn't been made? 19 MR. MORRIS: Objection to the form 20 of the question. 21 Α. Yes. 22 Ο. Okay. Thank you. 23 MR. MORRIS: I have nothing further. 24 Thank you so much, Mr. Waterhouse. 25 MR. HORN: I have no questions.

1	WATERHOUSE - 10-19-21	Page 395					
2	Thank you, Mr. Waterhouse. We appreciate						
3	your time. I am logging off the discussion						
4	and I will talk to y'all tomorrow.						
5	MR. MORRIS: Super.						
6	VIDEOGRAPHER: If there are no						
7	further questions, this ends the						
8	deposition excuse me. This ends the						
9	deposition, and we are going off the record						
10	at 7:30 p.m.						
11	(Deposition concluded at 7:30 p.m.)						
12							
13							
14	FRANK WATERHOUSE						
15							
16	Subscribed and sworn to before me						
17	this day of 2021.						
18							
19							
20							
21							
22							
23							
24							
25							
1							

Page 396 WATERHOUSE - 10-19-21 1 2. CERTIFICATE 3 I, SUSAN S. KLINGER, a certified shorthand 4 5 reporter within and for the State of Texas, do 6 hereby certify: 7 That FRANK WATERHOUSE, the witness whose deposition is hereinbefore set forth, was duly 8 9 sworn by me and that such deposition is a true record of the testimony given by such witness. 10 I further certify that I am not related to 11 any of the parties to this action by blood or 12 13 marriage; and that I am in no way interested in 14 the outcome of this matter. 15 IN WITNESS WHEREOF, I have hereunto set my hand this 19th of October, 2021. 16 Jusan D Klinger 17 18 19 Susan S. Klinger, RMR-CRR, CSR 20 Texas CSR# 6531 21 22 23 24 25

1	WATERHOUSE - 10-19-21	Page 397					
2	NAME OF CASE: In re: Highland Capital						
3	DATE OF DEPOSITION: October 19, 2021						
4	NAME OF WITNESS: Frank Waterhouse						
5	Reason Codes:						
6	1. To clarify the record.						
7	2. To conform to the facts.						
8	3. To correct transcription errors.						
9	PageLineReason						
10	Fromto						
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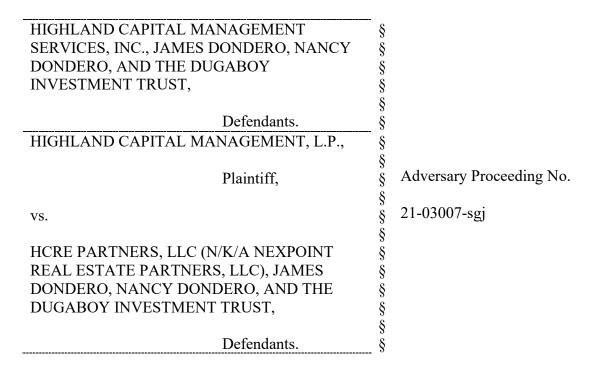
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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

In re:	§	Chapter 11
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., 1	§	G N- 10 24054 11
, ,	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
,	8	
VS.	8	21-03005-sgj
	8	a
NEXPOINT ADVISORS, L.P., JAMES	8	
DONDERO, NANCY DONDERO AND THE	8	
DUGABOY INVESTMENT TRUST,	8	
DUGABOT INVESTMENT TRUST,	8	
D.C. 1.	8	
Defendants.	8	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
VS.	§	21-03006-sgj
	8	
	J	

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



HIGHLAND'S OBJECTION TO MOTION OF DEFENDANT NEXPOINT ADVISORS, L.P. TO EXTEND EXPERT DISCLOSURE AND DISCOVERY DEADLINES

Highland Capital Management, L.P., the reorganized debtor ("<u>Highland</u>") in the above-captioned chapter 11 case (the "<u>Bankruptcy Case</u>") and the plaintiff in the above-captioned adversary proceeding (the "<u>Adversary Proceeding</u>"), hereby objects (the "<u>Objection</u>") to the *Motion of NexPoint Advisors, L.P. to Extend Expert Disclosure and Discovery Deadlines* [AP Docket No. 86]² (the "<u>Motion</u>") filed by defendant NexPoint Advisors, L.P. ("<u>NexPoint</u>") and joined by certain defendants in other related adversary proceedings. Highland fully incorporates by reference its contemporaneously filed brief (the "<u>Brief</u>")³ in opposition to the Motions and would show unto the Court as follows:

² Unless specified otherwise, references to "AP Docket No. __" are to the docket entries in NexPoint's Adversary Proceeding, 21-03005.

³ Capitalized terms used but not defined herein shall take on the meaning scribed thereto in the Brief.

RELIEF REQUESTED

- 1. By this Objection, Highland respectfully requests that the Court enter an order denying the Motions seeking to extend the expert disclosure and discovery deadlines set forth in the Scheduling Order.
- 2. Pursuant to Rules 7.1(d) and (h) of the *Local Bankruptcy Rules of the United States*Bankruptcy Court for the Northern District of Texas (the "Local Rules"), the Brief is being filed contemporaneously with this Objection and is incorporated by reference.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Highland respectfully requests that the Court enter an order (i) denying in whole the relief requested in the Motions, and (ii) granting Highland such further and additional relief as the Court deems just and proper.

Dated: December 1, 2021. PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

In re:	§ §	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,1	§ §	Case No. 19-34054-sgj11
Reorganized Debtor.	§ §	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§ §	Adversary Proceeding No.
vs.	§ §	21-03005-sgj
NEXPOINT ADVISORS, L.P., JAMES	§ §	
DONDERO, NANCY DONDERO AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
,	§	
Defendants.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§ §	21-03006-sgj
	§	

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

HICH AND CADITAL MANACEMENT		
HIGHLAND CAPITAL MANAGEMENT	§	
SERVICES, INC., JAMES DONDERO, NANCY	§	
DONDERO, AND THE DUGABOY	§	
INVESTMENT TRUST,	§	
	§	
Defendants.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	- §	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
VS.	§	21-03007-sgj
	8	
HCRE PARTNERS, LLC (N/K/A NEXPOINT	§	
REAL ESTATE PARTNERS, LLC), JAMES	§	
DONDERO, NANCY DONDERO, AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

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Rules		

HIGHLAND'S MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO MOTION OF DEFENDANT NEXPOINT ADVISORS, L.P. TO EXTEND EXPERT DISCLOSURE AND DISCOVERY DEADLINES

Highland Capital Management, L.P., the reorganized debtor ("<u>Highland</u>") in the above-captioned chapter 11 case (the "<u>Bankruptcy Case</u>") and the plaintiff in the above-captioned adversary proceeding (the "<u>Adversary Proceeding</u>"), hereby objects (the "<u>Objection</u>") to the *Motion of NexPoint Advisors, L.P. to Extend Expert Disclosure and Discovery Deadlines* [AP Docket No. 86]² (the "<u>Motion</u>") filed by defendant NexPoint Advisors, L.P. ("<u>NexPoint</u>") and joined by certain defendants in other related adversary proceedings.³ In support of its Objection, Highland respectfully states as follows:

I. <u>PRELIMINARY STATEMENT</u>⁴

- 1. NexPoint's Motion to modify the Scheduling Order is without merit and should be denied.
- 2. This Adversary Proceeding arises from NexPoint's default under its Note in the original principal amount of \$30.7 million. The Note required NexPoint to make Annual Installment payments to Highland on December 31 of each year.
- 3. NexPoint blames Highland for its failure to timely make the Annual Installment payment. Initially, NexPoint contended that Highland breached its obligations by negligently failing to make the payment on NexPoint's behalf. Then, Frank Waterhouse, an officer of NexPoint, a current employee of Skyview (the entity that services numerous of Mr. Dondero's

² Unless specified otherwise, references to "AP Docket No. __" are to the docket entries in NexPoint's Adversary Proceeding, 21-03005.

³ See Motion of Highland Capital Management Services, Inc. to Extend Expert Disclosure and Discovery Deadlines, filed at Docket No. 91 in Adversary Proceeding 21-03006 ("HCMS's Joinder") (incorporating NexPoint's Motion), and Motion of HCRE Partners, LLC to Extend Expert Disclosure and Discovery Deadlines, filed at Docket No. 86 in Adversary Proceeding 21-03007 ("HCRE's Joinder", and together with HCMS's Joinder, the "Joinders," and collectively with the Motion, the "Motions") (incorporating NexPoint's Motion).

⁴ Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed thereto below.

businesses), and Highland's former Chief Financial Officer, testified in his deposition that NexPoint failed to make the Annual Installment payment because Mr. Dondero instructed him in December 2020 not to make *any* payments to Highland from *any* of the entities that Mr. Dondero controlled.

4. NexPoint contends that, in light of this testimony, an expert is necessary to testify regarding whether Highland violated an "affirmative duty or obligation" it owed to NexPoint under Section 6.01 of the Shared Services Agreement to effectuate the payment on behalf of NexPoint, despite Mr. Dondero's instructions to the contrary. According to NexPoint:

[T]he question becomes whether Waterhouse or the Debtor 'put their head in the sand' in violation of any affirmative duty or obligation they may have had regarding the matter, such as; to ask Dondero whether they correctly understood him; to ask Dondero whether he meant NexPoint or the Note; to inform Dondero of the potential consequences of a default by potentially accelerating a 30-year promissory note; or to try to dissuade him from his decision.

Motion ¶ 13.

- 5. NexPoint's Motion to extend the expert disclosure and discovery deadlines in order to retain a testifying expert on Highland's duties of care under the Shared Services Agreement is without merit.
- 6. NexPoint's suggested expert testimony is improper because it concerns "the standards and duties of care under the parties' Shared Services Agreement" and otherwise seeks to interpret that Agreement for the Court. It is black-letter law that the determination of the existence and scope of contractual and other legal duties are improper subjects of expert opinion because they constitute legal conclusions that fall within the exclusive province of the Court.
- 7. Even if that were not the case (and it is), NexPoint fails to satisfy its burden of demonstrating "good cause" to modify the Scheduling Order under Rule 16(b) for three independent reasons. *First*, as set forth below, the Motion is untimely. *Second*, the suggested expert testimony is irrelevant because it would not assist a factfinder in determining any technical

or complex issues in this case. By its plain terms, the Shared Services Agreement does not impose an affirmative duty on—or even authorize—Highland to effectuate payments on behalf of NexPoint without authorization from a NexPoint Representative. NexPoint's reliance on Section 6.01 as the source of Highland's alleged duties is thus misguided, as that provision applies only to duties specifically set forth under the Agreement.⁵ *Finally*, allowance of the expert testimony at this late juncture would substantially prejudice Highland, with such prejudice being exacerbated (and not cured) by a continuance. If the Motion is granted, Highland will be forced to expend significant resources addressing NexPoint's latest theories of its defense, including through additional discovery and motion practice. It will also cause a further delay of the trial on the merits, thereby impeding Highland's ultimate recovery under the Note, all at the expense of Highland's creditors.

- 8. Separately, as ill-conceived as the Motion is, the Joinders raise considerable questions of good faith, because neither Highland Management Services, Inc. ("<u>HCMS</u>") nor HCRE Partners, LLC ("<u>HCRE</u>") even alleges that it is a party to a shared services agreement (let alone the Shared Services Agreement submitted with the Motion), nor can it. The Motion seeks to "designate a testifying expert on the standards and duties of care under the parties' Shared Services Agreement," but the Joinders offer no explanation for why such expert testimony would have any relevance to them since they are not parties to *any* shared services agreement.
- 9. For the reasons set forth herein, Highland respectfully requests that the Court deny the Motion in all respects.

⁵ NexPoint offers no explanation for why Highland's alleged obligations under the Shared Services Agreement supersede Mr. Waterhouse's fiduciary duties to NexPoint. If anyone had a duty to ask Mr. Dondero "Are you sure?" or "Do you know what you're doing" (an absurd concept on its own), it was surely Mr. Waterhouse—not in his capacity as a Highland employee—but in his capacity as an officer of, and a fiduciary to, NexPoint.

II. STATEMENT OF FACTS

A. The Note

- 10. On May 31, 2017, James Dondero ("Mr. Dondero") signed a 30-year term note on behalf of NexPoint and in favor of Highland (the "Note"). Morris Dec.⁶ Exhibit 1.
- 11. The Note consolidated NexPoint's obligations under five Prior Notes (as that term is defined in the Note) and was for an original principal amount of \$30,746,812.33. *See* Morris Dec. Exhibit 1, Ex. A. Highland received no consideration for consolidating the five demand notes into a single 30-year term note.
- 12. NexPoint and Mr. Dondero knew that NexPoint was required to pay Highland in Annual Installments, because it was spelled out plainly in the Note:
 - Annual Payment Dates. During the term of this Note, [NexPoint] shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each payment) in thirty (30) equal annual payments (the "Annual Installments") until the Note is paid in full. [NexPoint] shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

Morris Dec. Exhibit 1 § 2.1 (emphasis added).

- 13. NexPoint and Mr. Dondero also knew the consequences of failing to timely make the required Annual Installment payments, because they were also spelled out plainly in the Note:
 - 4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof [i.e., Highland], without notice, demand presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof [i.e., Highland].

Id. § 4 (emphases added).

⁶ References to "Morris Dec. __" are to the *Declaration of John Morris in Support of Objection to Motion of Defendant NexPoint Advisors, L.P. to Extend Expert Disclosures and Discovery Deadlines* being filed concurrently herewith.

- 14. Finally, Mr. Dondero expressly agreed on behalf of NexPoint to waive any notice of default or acceleration:
 - 5. <u>Waiver</u>. [NexPoint] hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, and all other notices of any kind hereunder.

Id. § 5.

15. Thus, based on the plain terms of the Note executed by Mr. Dondero on NexPoint's behalf at a time when Mr. Dondero indisputably controlled both entities, NexPoint agreed (a) to make Annual Installment payments to Highland on December 31 of each year; (b) that Highland would have the unilateral right upon a default to accelerate all unpaid principal and interest due under the Note without notice or demand; and (c) to waive, among other things, a grace period, notice of nonpayment, notice of intent to accelerate, and "all other notices of any kind hereunder."

B. NexPoint Defaults under the Note and Highland Sues to Collect

- 16. NexPoint does not dispute that it failed to make the Annual Installment payment due under the Note on December 31, 2020 in the amount of \$1,406,111.92.
- 17. By letter dated January 7, 2021, in an exercise of its unambiguous and unconditional rights under the Note, Highland demanded that NexPoint immediately pay all unpaid principal and interest then due under the Note (the "<u>Demand Letter</u>"). Morris Dec. Exhibit 2. The Demand Letter stated:

Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is \$24,471,804.98; however, interest continues to accrue under the Note.

The Note is in default, and payment is due immediately.

Id.

18. On January 22, 2021, after NexPoint failed to meet its obligations under the Note, Highland commenced this Adversary Proceeding. [AP Docket No. 1].

C. NexPoint Blames Highland for Its Default

- 19. On March 1, 2021, NexPoint filed its *Original Answer* asserting, among other things, that "[p]ursuant to that certain Shared Services Agreement, [Highland] was responsible for making payments on behalf of [NexPoint] under the note" such that any "alleged default" was caused by Highland's own negligence and breach of contract (the "Original Defense").

 Defendant's Original Answer [AP Docket No. 6] (the "Original Answer") ¶¶ 39-41.
- 20. On August 9, 2021, NexPoint filed its *First Amended Answer*, which did not substantively alter its Original Defense. [AP Docket No. 50] (the "Amended Answer") ¶¶ 39-41.
- 21. On September 1, 2021, after Highland amended its Complaint, NexPoint filed its *Answer to Amended Complaint* [AP Docket No. 64] (the "Final Answer"). The Final Answer did not substantively alter NexPoint's Original Defense. *See id.* ¶¶ 80-82.
- 22. Thus, at all times prior to filing the Motion, NexPoint contended that its failure to timely make the Annual Installment due on December 31, 2020 was caused by Highland's own alleged negligence and breach of the Shared Services Agreement.

D. The Court Enters the Scheduling Order

- 23. On September 6, 2021, the Court entered the *Order Approving Stipulation and Agreed Order Governing Discovery and Other Pre-Trial Issues* [AP Docket No. 70] (the "Scheduling Order").
- 24. The Scheduling Order provides, in pertinent part, that "expert designations and disclosures of all opinions, and the bases therefor, will be made by October 29, 2021, and experts will be deposed between October 29, 2021 and November 8, 2021." Scheduling Order ¶ 3.

E. Mr. Waterhouse Testifies that Mr. Dondero Instructed Him Not to Make Any Payments to Highland

- 25. In December 2020, Frank Waterhouse ("Mr. Waterhouse") wore multiple hats that Mr. Dondero gave to him, including: (a) Chief Financial Officer of Highland; (b) Treasurer of NexPoint; (c) Treasurer of HCMS; (d) Treasurer of Highland Capital Management Fund Advisors, L.P. ("HCMFA", and together with NexPoint, the "Advisors"); and (e) Principal Executive Officer of certain funds managed by the Advisors. *See* Morris Dec. Exhibit 3 at 24:2-25; 35:8-22; 120:7-12; 327:3-8.
- Annual Installment payment due on December 31, 2020 because Mr. Dondero had instructed him in December 2020 not to cause any payments to be made to Highland. Mr. Waterhouse also testified that he never followed up with Mr. Dondero or reminded him that the payment was coming due at the end of the month. *See* Morris Dec. Exhibit 3 at 390:4-392:17.
- 27. Mr. Dondero testified that he was unaware of anyone ever instructing or authorizing Highland to make the Annual Installment payment due under the Note on NexPoint's behalf. Morris Dec. Exhibit 4 at 462:16-463:9. Mr. Waterhouse concurred and confirmed that Highland's employees were not authorized to make the Annual Installment payment due at the end of the year without prior approval:
 - Q: Do you know if anybody ever instructed Highland's employees to make the payment that was due by NexPoint at the end of the year?
 - A: Did anyone instruct Highland's employees to make that payment?
 - Q: Correct.
 - A: Anyone not that I'm aware.
 - Q: ... [Were] any of Highland's employees authorized to effectuate the payment on behalf of NexPoint that was due at the end of the year without getting approval from either you or Mr. Dondero?

A: They had the – they had the ability to make the payment, but they didn't – you know, that – that payment needed to be approved.

Morris Dec. Exhibit 3 at 381:21-382:16.

F. <u>Highland's Obligations under the Shared Services Agreement Were</u> Limited to Those "Specifically" Identified Therein

- 28. NexPoint and Highland entered into that certain *Amended and Restated Shared*Services Agreement effective as of January 1, 2018 (the "SSA"). Rukavina Dec., Exhibit A.⁷
- 29. Article II of the SSA required Highland to provide "assistance and advice" with respect to certain specified services. Highland is unaware of any provision in the SSA—and NexPoint cites to none—that authorized Highland to control NexPoint's bank accounts or required Highland to effectuate payments on behalf of NexPoint without receiving instruction or direction from an authorized representative of NexPoint.
- 30. In fact, Article II of the SSA expressly provided that "for the avoidance of doubt ... [Highland] shall *not* provide any advice to [NexPoint] or perform any duties on behalf of [NexPoint], other than the back- and middle office services contemplated herein, with respect to (a) the general management of [NexPoint], its business or activities" SSA at § 2.02 (emphasis added).
- 31. To emphasize the point further, the SSA expressly curtailed Highland's authority to act on NexPoint's behalf:

Section 2.06 <u>Authority</u>. [Highland's] scope of assistance and advice hereunder is *limited to the services specifically provided for in this Agreement. [Highland]* shall not assume or be deemed to assume any rights or obligations of [NexPoint] under any other document or agreement to which NexPoint is a party. . . . [Highland] shall not have any duties or obligations to [NexPoint] unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which [NexPoint] is a party.

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⁷ References to "Rukavina Dec. __" are to the *Declaration of Davor Rukavina* [AP Docket No. 86-1] attached to the Motion.

Id. § 2.06 (emphasis added).

32. There can be no credible dispute that (a) the Note is a "document or agreement to which NexPoint is a party," and that (b) the making of the Annual Installment payments were "obligations of" NexPoint under the Note.

G. The Instant Motion

33. Apparently stunned by Mr. Waterhouse's testimony, NexPoint now seeks to extend the expert disclosure and discovery deadlines set forth in the Scheduling Order so it can obtain expert testimony regarding Highland's legal duties under Section 6.01 of the Shared Services Agreement. Specifically, NexPoint proposes to retain an expert to testify "on the standards and duties of care under the parties' Shared Services Agreement . . . with respect to Highland's role in NexPoint's alleged failure to make a December 21, 2020 payment on the Note (defined below); specifically, that Highland was responsible for ensuring that NexPoint made this payment." Motion ¶ 1.

III. ARGUMENT

A. NexPoint's Suggested "Expert Testimony" Is Improper as a Matter of Law

- 34. NexPoint's suggested expert testimony is improper as a matter of law because it amounts to a legal conclusion.
- 35. A party may not offer an expert opinion on the scope of a party's "legal duty" because such testimony amounts to a legal conclusion. *See Panhandle Adver., LLC v. United Rentals Realty, LLC*, 2:19-CV-189-Z-BR, 2021 WL 1112901, at *5 (N.D. Tex. Feb. 12, 2021); *Flax v. Quitman County Hosp., LLC*, 2:09-CV-101-M-D, 2011 WL 3585870, at *5 (N.D. Miss. Aug. 16, 2011).
- 36. NexPoint's suggested expert testimony relates to Highland's "duties of care under the parties' [SSA]" and, specifically, whether "Highland was responsible" under the SSA for

"ensuring that NexPoint made" its Annual Installment payment under its Note. Motion ¶¶ 1, 18. This is precisely the type of expert testimony that courts preclude because it constitutes a legal conclusion. *See Panhandle*, 2021 WL 1112901 at *5 (granting plaintiff's motion to exclude expert testimony "as to his opinions regarding the legal duties Defendant owed Plaintiff under the lease at issue" because "opinions on the duties owed by the defendants and whether they fulfilled those duties were legal conclusions and not the proper subject for expert testimony"); *Flax*, 2011 WL 3585870 at *5 (prohibiting expert testimony "on the issue of *law* of whether a duty of care was owed") (emphasis in original); *Hanspard v. Otis Elevator Co.*, CIV.A. 05-1292, 2007 WL 839994, at *2 (W.D. La. Jan. 12, 2007) (granting plaintiff's motion *in limine* to exclude expert testimony where "an opinion as to the scope of [party's] contractual duties" constitutes a legal conclusion); *Taylor Pipeline Const., Inc. v. Directional Rd. Boring, Inc.*, 438 F. Supp. 2d 696, 706 (E.D. Tex. 2006) (finding expert testimony improper where it "opines as to the duties" owed by parties because "they amount to conclusions of law").

- 37. The question of whether Highland owed or breached any legal duties is an issue for the trier of fact to decide. *See Askanase v. Fatjo*, 130 F.3d 657, 673 (5th Cir. 1997) (affirming lower court's preclusion of expert testimony regarding whether officers and directors "fulfilled their fiduciary duties to the Company ... is a legal opinion and inadmissible. Whether the officers and directors breached their fiduciary duties is an issue for the trier of fact to decide. It is not for [the expert] to tell the trier of fact what to decide").
- 38. Accordingly, NexPoint's suggested expert testimony on Highland's duties under the SSA is improper as a matter of law, and the Motion should be denied on this basis alone.

B. NexPoint Fails to Establish that Good Cause Exists to Modify the Scheduling Order

39. NexPoint fails to satisfy its burden of demonstrating good cause to modify the Scheduling Order.

- 40. Under Rule 16(b) of the Federal Rules of Civil Procedure, a scheduling order may be modified only for "good cause." FED. R. CIV. P. 16(b)(4). Courts consider four factors in determining whether "good cause" is shown: "(1) the explanation for the failure to identify the witness; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice." *Geiserman v. MacDonald*, 893 F.2d 787, 791 (5th Cir.1990). These are the same four factors used to determine whether to exclude expert testimony under Rule 37(c)(1) of the Federal Rules of Civil Procedure. *See Grand Time Corp. v. Watch Factory, Inc.*, 3:08-CV-1770-K, 2009 WL 10678210, at *2 (N.D. Tex. Nov. 18, 2009). Ultimately, "the good cause standard requires the 'party seeking relief to show that the deadlines [could not] reasonably [have been] met despite the diligence of the party needing the extension." *Binh Hoa Le v. Exeter Fin. Corp.*, 3:15-CV-3839-L, 2019 WL 1436375, at *14 (N.D. Tex. Mar. 31, 2019) (quoting *S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 535 (5th Cir. 2003)).
- 41. "Under Rule 16(b), the movant has the burden of showing good cause to modify a scheduling order." *Grand Time*, 2009 WL 10678210 at *3. Whether to modify a scheduling order is within the court's broad discretion. *See Geiserman*, 893 F.2d at 790 ("[O]ur court gives the trial court broad discretion to preserve the integrity and purpose of the pretrial order") (internal quotations omitted); *Reliance Ins. Co. v. La. Land & Expl. Co.*, 110 F.3d 253, 257 (5th Cir. 1997). Moreover, "a trial court's decision to exclude evidence as a means of enforcing a pretrial order must not be disturbed absent a clear abuse of discretion." *Geiserman*, 893 F.2d at 790.
- 42. Each of the four factors weighs in favor of denying modification of the Scheduling Order.

1. NexPoint's Explanation for Failing to Timely Designate an Expert Is Deficient

- NexPoint's explanation for its failure to timely designate an expert is disingenuous. NexPoint contends that, *inter alia*, its failure to previously designate an expert was "due solely to not having the benefit of Waterhouse's and Seery's recent deposition testimony," and that expert testimony is now "necessitated by Waterhouse's testimony and not any prior action or inaction of NexPoint Motion." Motion ¶ 21. NexPoint seeks to modify the Scheduling Order simply because the deposition of one of its witnesses did not go well. This is plainly improper under Rule 16(b). *See Reliance*, 110 F.3d at 257 (affirming lower court's denial of party's request to supplement expert report where "[movant] asked for an opportunity to avoid the deadline for its expert report merely because the deposition of its expert witness did not go well," noting that "[d]istrict judges have the power to control their dockets by refusing to give ineffective litigants a second chance to develop their case").
- Defense was expressly based on the SSA. [AP Docket No. 6 ¶¶ 39-41]. Given the testimony of Mr. Dondero (which could not have been unexpected) and Mr. Waterhouse that NexPoint never authorized or instructed Highland to make the Annual Installment payment due on December 31, 2020, see Section II.E, supra, NexPoint has always had the burden of proving that Highland owed a duty under the SSA, yet it never offered expert opinions on the topic. If NexPoint wanted to offer "expert testimony" concerning Highland's duties under the SSA, it had nine months to do so, and Mr. Waterhouse's testimony, expected or not, does nothing to change that. See Geiserman, 893 F.2d at 792 (finding party failed to provide a "valid reason that would justify excusing him from the deadlines imposed by the lower court," noting "[t]he claimed importance of expert testimony underscores the need for [party] to have timely designated his expert witness," and "[t]he importance of such proposed testimony cannot singularly override the enforcement of local rules

and scheduling orders"). NexPoint's conclusory statements regarding the need for expert testimony are insufficient under Rule 16(b). *See Binh Hoa*, 2019 WL 1436375 at *20 (finding "vague and conclusory statements regarding the need for additional information or facts do not adequately explain [party's] failure to meet the expert deadline in the Scheduling Order").

45. Accordingly, the first factor strongly favors denial of the Motion.

2. NexPoint's Suggested "Expert" Testimony Is Irrelevant

- 46. The second factor—the importance of the suggested expert testimony— weighs heavily in favor of denying modification of the Scheduling Order.
- 47. In addition to being improper, the suggested expert testimony is also irrelevant. To be relevant, "expert testimony [must] 'assist the trier of fact to understand the evidence or to determine a fact in issue." *Charalambopoulos v. Grammer*, 3:14-CV-2424-D, 2017 WL 930819, at *9 (N.D. Tex. Mar. 8, 2017) (quoting *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 245 (5th Cir. 2002)).
- 48. NexPoint contends that its suggested expert testimony is "important because the duties of care as specified in the [SSA] are terms of art necessitating an expert analysis." Motion ¶ 21. NexPoint's reliance on Section 6.01 in support of its Motion is misplaced.
- 49. By its express terms, Section 6.01 does not impose a duty on Highland to make or effectuate Annual Installment payments on NexPoint's behalf without authorization from a representative of NexPoint. Rather, Section 6.01 sets forth a "standard of care" that applies *only* with respect to the discharge of "duties under this Agreement." In fact, to remove all doubt, the

⁸ Notably, and notwithstanding the "standard of care" set forth in Section 6.01, the SSA provides Highland with considerable exculpation and indemnification protections that alone defeat NexPoint's Original Defense. For example, NexPoint agreed not to hold Highland liable for any acts or omissions unless it is determined by a court of competent jurisdiction to "be the result of gross negligence or to constitute fraud or willful misconduct." Rukavina Dec., Exhibit A § 6.02. NexPoint also agreed to indemnify Highland "from and against any and all claims and causes of action" for, among other things, "negligence." *Id.* § 6.03.

SSA emphasizes multiple times that Highland had *no* duties or obligations except with respect to those "specifically" identified therein. *See* Rukavina Dec., Exhibit A §§ 2.02, 2.06. NexPoint does not and cannot identify any provision in the SSA that imposes a duty on Highland to make Annual Installment payments on NexPoint's behalf without direction from an authorized NexPoint representative. *See* Original Answer ¶¶ 39-41 (no SSA provision cited); Amended Answer ¶¶ 39-41 (no SSA provision cited); Final Answer ¶¶ 80-82 (no SSA provision cited); Motion, generally (citing only to Section 6.01).

- 50. Thus, based on the plain terms of the SSA and NexPoint's own pleadings, expert testimony regarding Highland's alleged "duties" is irrelevant. *See Geiserman*, 893 F.2d at 791 (affirming lower court's refusal to modify scheduling order, noting that expert testimony "is not critical" if the issue at hand is "obvious to a layperson or established as a matter of law"); *Rolls-Royce Corp. v. Heros, Inc.*, CIV.A. 307-CV-0739-D, 2010 WL 184313, at *6 (N.D. Tex. Jan. 14, 2010) ("Testimony is irrelevant [] when an expert offers a conclusion based on assumptions unsupported by the facts of the case").
- 51. Moreover, the suggested expert testimony will not help the factfinder understand a complex fact in issue. Contrary to NexPoint's representations, this Adversary Proceeding does not involve complicated or technical issues. The issues in this Adversary proceeding are whether NexPoint defaulted on its Note and whether NexPoint can prove that Highland's alleged "negligence" or "breach of contract" caused such default. Final Answer ¶ 80-82. These issues are well within a fact-finder's understanding and are not the type which would necessitate an expert. *See Nola Ventures, LLC v. Upshaw Ins. Agency, Inc.*, CV 12-1026, 2014 WL 12721924, at *10 (E.D. La. Nov. 7, 2014), *on reconsideration*, CIV.A. 12-1026, 2014 WL 6090584 (E.D. La. Nov. 13, 2014) (excluding expert testimony where, "[d]espite Plaintiffs' arguments to the contrary, this case is not about the complicated inner workings of the insurance industry. It is about whether

an insurance agent misrepresented the type of coverage that Plaintiffs believed they were purchasing, and whether Defendants owed a heightened duty of care to Plaintiffs. Nothing in [expert's] report or proposed testimony will help the jury to understand a fact in issue that is not within the common understanding of a lay juror"); *Henderson v. Atmos Energy*, 496 F. Supp. 3d 1011, 1017 (E.D. La. 2020) (excluding expert testimony as irrelevant and unnecessary where "it is one based in common sense").

- 52. At all relevant times, Mr. Waterhouse was an officer and a fiduciary of NexPoint, serving as its Treasurer. If anyone had an obligation to ask Mr. Dondero if he wanted to reconsider his instructions, it was Mr. Waterhouse in the first instance—not in his capacity as an employee of Highland, but as an officer and fiduciary of the obligor, NexPoint. Whether Mr. Dondero or Mr. Waterhouse is telling the truth is an interesting issue, but the Court need not resolve their dispute because it would only be relevant if the SSA imposed a duty on Highland to effectuate the Annual Installment payment without ever receiving any direction or instruction from a duly authorized representative of NexPoint. And, as Mr. Waterhouse testified, the SSA imposes no such duty.
- 53. Accordingly, the suggested expert testimony is irrelevant, and the Motion should be denied on this basis.

3. Allowing the Testimony Would Prejudice Highland

- 54. The third and fourth factors also weigh in favor of denying the Motion.
- 55. Allowing the suggested expert testimony would prejudice Highland because Highland would need to expend additional resources responding to NexPoint's latest theory of its defense by way of: (i) retaining a rebuttal expert; (ii) deposing NexPoint's expert; or (iii) moving to strike the expert testimony. *See Geiserman*, 893 F.2d at 791 (affirming lower court's striking of untimely witness designation and preclusion of expert testimony where delay of "a couple

weeks in designating the expert witness" would have "disrupted the court's discovery scheduling and the opponent's preparation," and resulted in "expense that would result from an extended discovery schedule for [movant's] failure to adhere to deadlines," noting that "the trial court has latitude to control discovery abuses and cure prejudice by excluding improperly designated evidence"); *Binh Hoa*, 2019 WL 1436375 at *20 ("It would [] be patently unfair to allow Plaintiff to supplement and amend his expert report this late in the case without: (1) allowing Defendants to amend their expert designations and provide an expert report to address the matters in Plaintiff's amended and supplemental expert reports, (2) giving Defendants an opportunity to depose Plaintiff's expert regarding his most recent opinion . . .").

56. A continuance would not cure this prejudice because the trial on the merits of the underlying action would be unnecessarily delayed. This would ultimately delay Highland's potential recovery under the Note and distributions to creditors under Highland's Plan. See S&W Enters., 315 F.3d at 537 (affirming lower court's denial of untimely submission of expert report where defendant would be forced to conduct additional discovery in response to movant's new materials, noting that "while a continuance could be granted for additional discovery . . . a continuance would unnecessarily delay the trial"); Reliance, 110 F.3d at 257-58 (affirming lower court's denial to modify scheduling order to add expert testimony where court found "[t]o allow plaintiff to add more material now and create essentially a new report would prejudice the defendants, who would then have to get an expert to address these last-minute conclusions, and thus disrupt the trial date in this case") (internal quotations omitted); Geiserman, 893 F.2d at 791 (finding that while attorney "could have conducted new discovery and redeposed witnesses under a continuance in response to the untimely designation, this would have resulted in additional delay and increased the expense of defending the lawsuit"); Binh Hoa, 2019 WL 1436375 at *20 ("Ordering another continuance would only serve to reward Plaintiff for his dilatory conduct and

failure to comply with court-ordered deadlines and this district's Local Civil Rules and result in additional delay and expense. Regardless, it is not incumbent on the court to award litigants for failing to develop their cases"). A simple collection action like the Adversary Proceeding should not be continually extended simply because the defendant is unsatisfied with its defenses and the evidence adduced in discovery.

57. For these additional reasons, NexPoint fails to demonstrate good cause to excuse it from the deadlines set forth in the Scheduling Order. Accordingly, the Motion should be denied.

C. <u>HCRE's and HCMS's Joinders Have Even Less Merit than the Motion and Should Be Denied</u>

58. The Joinders are even more frivolous than the Motion. In addition to the reasons set forth above, neither HCMS nor HCRE was ever a party to any shared services agreement with Highland, let alone the SSA that is the foundation of the Motion. Accordingly, the Joinders are without merit and should be summarily denied by the Court.

CONCLUSION

For the foregoing reasons, Highland respectfully requests that the Court (i) deny the Motions and (ii) grant such other and further relief as the Court deems just and proper.

Dated: December 1, 2021. PACHULSKI STANG ZIEHL & JONES LLP

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